

United States
Circuit Court of Appeals
For the Ninth Circuit.

6

ENRIQUE FLORES MAGON AND RICARDO
FLORES MAGON,

Plaintiffs in Error,
vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the Southern District of California,
Southern Division.

Filed

JAN 9 - 1917

F. D. Monkton,
Clerk.

United States
Circuit Court of Appeals
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

No. 1071—CRIMINAL.

ENRIQUE FLORES MAGON and RICARDO
FLORES MAGON,

Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

Writ of Error.

The United States of America,—ss.

The President of the United States of America, to
the Judges of the District Court of the United
States, in and for the Southern District of Cali-
fornia, Southern Division, Greeting:

Because in the records and proceedings, as also in
the rendition of the judgment of a plea which is in
the District Court before the Honorable Oscar A.
Trippet, one of you, between the United States
of America, plaintiff and defendant in error, and
Enrique Flores Magon and Ricardo Flores Magon,
defendants, and said Enrique Flores Magon and
Ricardo Flores Magon, plaintiffs in error, a mani-
fest error hath happened to the great damage of the
said plaintiff in error, as by complaint doth appear;
and we, being willing that error, if any hath been,
should be duly corrected, and full and speedy justice
done to the parties aforesaid, and in this behalf, do

command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid being then and [3*] there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

Witness the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, this June 26th, 1916.

[Seal] WM. M. VAN DYKE,
Clerk of the District Court of the United States for
the District of California.

By Chas. N. Williams,
Deputy Clerk.

The foregoing writ of error is hereby approved.

OSCAR A. TRIPPET,
District Judge.

I hereby certify that a copy of the within writ of error was on the 26th day of June, 1916, lodged in the clerk's office of said United States District Court for the Southern District of California, Southern

*Page-number appearing at foot of page of original certified Transcript of Record.

Division, for the said defendants in error.

J. H. RYCKMAN,
Attorney for Defendants in Error.

WM. M. VAN DYKE,

Clerk United States District Court, Southern Dis-
trict of California.

By Leslie S. Colyer,
Deputy Clerk. [4]

[Endorsed]: No. 1071—Criminal. In the District Court of the United States, in and for the Southern District of California, Southern Division. Enrique Flores Magon and Ricardo Flores Magon, Plaintiffs in Error, vs. The United States of America, Defendant in Error. Writ of Error. Filed June 26, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. [5]

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

No. 1071—CRIMINAL.

ENRIQUE FLORES MAGON and RICARDO
FLORES MAGON,

Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

Citation on Writ of Error.

United States of America,

Southern District of California,—ss.

To the United States of America, and to Albert Schoonover, United States Attorney for California, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Southern District of California, wherein Enrique Flores Magon and Ricardo Flores Magon are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Los Angeles, in said District, this June 26th, 1916.

OSCAR A. TRIPPET,
Judge.

Service of the within citation is hereby accepted at Los Angeles, California, this 26th day of June, 1916.

ALBERT SCHOONOVER,
U. S. Attorney for Southern District of California.

[6]

[Endorsed]: No. 1071—Criminal. In the District Court of the United States, in and for the Southern

District of California, Southern Division. Enrique Flores Magon and Ricardo Flores Magon, Plaintiffs in Error, vs. The United States of America, Defendant in Error. Citation on Writ of Error. Filed June 26, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. [7]

Names and Addresses of Attorneys.

For Plaintiffs in Error:

J. H. RYCKMAN, Esq., 921 Higgins Building,
Second and Main Sts., Los Angeles, California.

For Defendants in Error:

ALBERT SCHOONOVER, Esq., United States
Attorney, Los Angeles, California. [8]

In the District Court of the United States of America, in and for the Southern District of California, Southern Division.

No. 1071—CRIMINAL.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

ENRIQUE FLORES MAGON and RICARDO
FLORES MAGON,

Defendants. [9-10]

Indictment.

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

At a stated term of said court, begun and holden at the City of Los Angeles, County of Los Angeles, within and for the Southern Division of the Southern District of California, on the second Monday of January, in the year of our Lord one thousand nine hundred and sixteen,—

The grand jurors of the United States of America, chosen, selected and sworn, within and for the division and district aforesaid, on their oath present:

That Enrique Flores Magno, Ricardo Flores Magon and Wm. C. Owen, hereinafter in this indictment called defendants, whose full and true names, and the full and true name of each of whom, other than in this indictment stated, is unknown to the grand jurors, late of the Southern Division of the Southern District of California, did, on the 18th day of December, in the year of our Lord one thousand nine hundred and fifteen, knowingly, willfully, unlawfully and feloniously, deposit and cause to be deposited in the postoffice and the stations thereof at the city of Los Angeles, in the county of Los Angeles, State of California, and within the said Southern Division of said Southern District of California, and within the jurisdiction of this Honorable Court, certain mail matter, to wit, a newspaper published and printed in the said city of Los Angeles, and named and called the "Regeneracion," which said

newspaper did then and there contain certain indecent, vile and filthy substance and language, and which said newspaper was a publication of an indecent character, and which said indecent, vile and filthy [11] substance and language was of a character tending to incite in the minds of persons reading the same murder and assassination, and which said substance and language was so printed and published in said "Regeneracion" in the Spanish language, and was and is in the words following:

"Wilson esta en connivencia con Carranza, porque este viejo embaucador ha prometido a aquél favorecer a los capitalistas americanos en México; es decir. Carranza ha prometido a Wilson entregar al pueblo mexicano atado de pies y manos a la misma plutocracia rapaz americana a la que Diaz lo tuvo esclavizado."

which said language being interpreted and translated into English means and is as follows:

"Wilson is in connivance with Carranza, because the old sharper has promised Wilson that he would favor American capitalists in Mexico. That is to say, Carranza has promised to deliver the Mexican people, tied hand and feet, to the same rapacious American plutocracy that had Diaz enslaved."

and said newspaper of said indecent character was so deposited and caused to be deposited in said United States postoffice at said city of Los Angeles, to be transmitted by the postoffice establishment to many and divers persons within the United States of America, and within the Republic of Mexico, the

names of which divers persons are unknown to the grand jurors, and many copies of said newspaper were so deposited and caused to be deposited in said United States postoffice at one time and as one act to be so distributed by said postoffice establishment and delivered respectively, a copy each, to said many and divers persons. [12]

Contrary to the form of the Statutes of the United States in such case made and provided, and against the peace and dignity of the said United States.

SECOND COUNT.

And the grand jurors aforesaid, on their oath aforesaid, do further present:

That Enrique Flores Magon, Ricardo Flores Magon and Wm. C. Owen, hereinafter in this indictment called defendants, whose full and true names, and the full and true name of each of whom, other than in this indictment stated, is unknown to the grand jurors, late of the Southern Division of the Southern District of California, did, on the 25th day of September, in the year of our Lord one thousand nine hundred and fifteen, knowingly, willfully, unlawfully and feloniously, deposit and cause to be deposited in the postoffice and the stations thereof at the city of Los Angeles, in the county of Los Angeles, State of California, and within the said Southern Division of said Southern District of California, and within the jurisdiction of this Honorable Court, certain mail matter, to wit, a newspaper published and printed in the said city of Los Angeles, and named and called the "Regeneracion," which said newspaper did then and there contain certain inde-

cent, vile and filthy substance and language, and which said newspaper was a publication of an indecent character, and which said indecent, vile and filthy substance and language was of a character tending to incite in the minds of persons reading the same, murder and assassination, and which said substance and language was so printed and published in said "Regeneracion" in the Spanish language, and was and is in the words following: [13]

"Justicia y no balazos, es lo que lebe darse a los revolucionarios de Texas. Y desde luego, todos debemos exigir que cesen esas persecuciones a mexicanos inocentes, y, por lo que respecta a los revolucionarios, debemos exigir cambien que no se les fusile.

Quienes deben ser fusilados sou los 'rangers,' y la turba de bandidos que los acompañan en sus depredaciones."

* * * * *

"!Nada de reformas! Lo que necesitamos los hambrientos, es la libertad completa, basada en la independencia economica. !Abajo el llamado derecho de propiedad privada! Y mientras este derecho inicuo continue en pie, en pie continuemos y con las armas en la mano todos los proletarios. !Basta de burlas! Proletarios: a quien os habla de carrancismo, escupele el rostro y quebradle los hocicos.

!Vive tierra y Libertad!"

which said language being interpreted and translated into English means and is as follows:

"Justice, and not bullets is what ought to be

given to the revolutionists of Texas, and from now on we should demand that those persecutions to innocent Mexicans should cease, and as to the revolutionists, we should also demand that they be not executed (shot).

The ones who should be shot are the 'rangers' and the band of bandits who accompany them in their depredations.'

* * * * *

"Enough of reforms! What we hungry people need is entire liberty based on economic independence. Down with [14] the so-called rights of private property, and as long as this evil right continues to exist we shall continue under arms. Enough with mockery! Poor people, whoever speaks to you about Carranzismo, spit in their face and break their jaws.

Long live land and Liberty!"'

and said newspaper of said indecent character was so deposited and caused to be deposited in said United States postoffice at said city of Los Angeles, to be transmitted by the postoffice establishment to many and divers persons within the United States of America, and within the Republic of Mexico, the names of which divers persons are unknown to the grand jurors, and many copies of said newspaper were so deposited and caused to be deposited in said United States postoffice at one time and as one act, to be so distributed by said postoffice establishment and delivered respectively, a copy of each, to said many and divers persons.

Contrary to the form of the Statutes of the United

States in such cases made and provided, and against the peace and dignity of the said United States.

THIRD COUNT.

And the grand jurors aforesaid, on their oath aforesaid, do further present:

That Enrique Flores Magon, Ricardo Flores Magon and Wm. C. Owen, hereinafter in this indictment called defendants, whose full and true names, and the full and true name of each of whom, other than in this indictment stated, is unknown to the grand jurors, late of the Southern Division of the Southern District of California, did, on the 6th day of November, in the [15] year of our Lord one thousand nine hundred and fifteen, knowingly, wilfully, unlawfully and feloniously, deposit and cause to be deposited in the postoffice and the stations thereof at the city of Los Angeles, in the county of Los Angeles, State of California, and within the said Southern Division of said Southern District of California, and within the jurisdiction of this Honorable Court, certain mail matter, to wit, a newspaper published and printed in the said city of Los Angeles, and named and called the "Regeneracion," which said newspaper did then and there contain certain indecent, vile and filthy substance and language, and which said newspaper was a publication of an indecent character, and which said indecent, vile and filthy substance and language was of a character tending to incite in the minds of persons reading the same, murder and assassination, and which said substance and language was so printed and pub-

lished in said “Regeneracion” in the Spanish language, and was and is in the words following:

“Ves, pues, hermano carrancista, que el problema que tratan de resolver los rebeldes que van a quedar en pie, con las armas en la mano, cuando Carranza sea Presidente, es el mismo problema que tienes que resolver tu, porque te afecta de la misma manera que a ellos. Tu deberes ayudarlos, y para ello, no entregues las armas cuando se ordene el licenciamiento de tropas carrancistas. Lo que debes hacer en ese momento, o antes si te es posible, es rebelarte, volviendo tu fusil sobre tus jefes y oficiales, sin que te tiemble el pulso al disparles tu arma, porque son tus *enemigos*, puestienen interes en que perduren las instituciones que los capacitan para llevar una vida privilegiada. Un corazon bien puesto, pulso firme y certera punteria, eso es lo unico que necesitas para acabar con tus inmediatos [16] verdugos.”

Sin rindes tu arma, regresarás a tu hogar en la miseria, dispuesto a vender tu fuerza muscular a cualquier burgues por lo que tenga a bien darte. Nada habras ganado, mientras tus jefes y oficiales gozatan en la ciudad de toda clase de placeres, saborearan distinciones y ostentaran cruces y medallas en el pecho. Si te quedas en el ejercito carrancista como soldado permanente, seras un esbirro, un verdugo de tus hermanos de clase, porque serviras para apoyar a los ricos.

La honradez te senala el camino que debes tomar: el de la rebeldia contra todo gobierno

hasta alcanzar el triunfo de los principios contenidos en el Manifiesto de 23 de Septiembre de 1911, expedido por la Junto Organizadora del Partido Liberal Mexicano, principios que abogan por la muerte del Capital, de la Autoridad y del Clero de todas las religiones.

Decidete a seguir este camino. Que no te engañen los sabi hondos con la majaderia de que necesitas tal o cual preparacion para emprender una lucha semejante. Esas son argucias de politicos; esos son sofismas propalados y fomentados por tus enemigos, aun cuando ellos se presenten con el caracter de amigos tuyos. Fue el argumento de los enemigos de la gran revolucion Francesa, para impedir que se diera al pueblo la libertad politica; fue el argumento de Porfirio Diaz para impedir que se te dieran libertades; es el argumento de los policicos carrancistas para que no obtengas la libertad economica, base de todas las libertades, y que no es otra que la facultad de ganarse la vida, por medio del [17] trabajo, sin necesidad de depender de nadie, facultad que se consigue solamente, entendole bien, solemente, haciendo que la tierra, las casas, la maquinaria, los medios de transportacion y los efectos almacenados, pasen a ser, por medio de la expropriacion, la propiedad comun de todos, hombres y mujeres, sin distincion de raza ni color. A quien te diga lo contrario, escupele la cara y aun matalo, pues es necesario, es absolutamente necesario iniciar un severo procedimiento de limpia revolucionaria.

Lo que nos estorba a los desheredados, debemos suprimirlo como se pueda: por la buena o por la mala! Como se suprime al tigre, como se aniquila a la vibora de cascabel, como se aplasta a la tarantula. Los que te dicen que todavia no estas preparado para tal o cual conquista que te beneficia, son los que tienen interes en que se retarde tu emancipacion, para poder ellos entre tanto vivir a tus expensas.”

which said language being interpreted and translated into English means and is as follows:

“So you see, brother Carrancistas, the problem which is going to be solved by the rebels who retain their arms, when Carranza becomes president, is the same problem that you will have to decide because it affects you in the same manner. Your duty is to help and for this purpose do not surrender your arms when the troops are ordered disbanded. What you should do at such a time, or before, if possible, is to rebel, turn your arms against your chiefs and officers and without trembling pulse open fire with your rifles, because they are your enemies, and are concerned [18] in having these conditions last forever, so they can have a life of privilege.

A strong heart, a firm pulse and steady aim is all you need to exterminate your immediate oppressors.

If you surrender your arms you will return to your home in poverty, ready to sell your blood and strength to the rich at their own price.

You will have accomplished nothing, but in the

meantime your chiefs and officers will enjoy, in the city, all kinds of pleasures and honors and display on their breasts crosses and medals. If you remain in the Carranza army as a permanent soldier you will be a bad man, an executioner of *you* brothers of your class because you will help to serve the rich.

Honor points to the road you should take; rebel against all governments until you attain the triumph of the principles comprised in the declaration of the 23 of September, 1911, expedited by the 'Mexican Liberal Party,' principles that advocate the death of Capital, or Authority and the clergy of all religions.

Decide to follow this road. Don't be deceived by the specious arguments of alleged wise politicians, these same arguments were used by the enemies of the great French revolution to prevent people from obtaining their political liberty. It was the argument of Porfirio Diaz to prevent you from obtaining your liberties; it is also the argument of the Carranza party used to prevent you from obtaining your economic liberty, which is the foundation of all liberties. This means the privilege of earning your living by working for yourself and being independent, and this can only be obtained, understand, by expropriation of land, houses, machinery, means of [19] transportation and merchandise, becoming common property without the distinction of men or women, race or color, He who tells you the contrary spit in his face, and even kill him,

because it is necessary, it is absolutely necessary to initiate a revolutionary campaign of house-cleaning.

We, the disinherited, must rid ourselves of those who are in our way, if we can, by hook or crook, the same as we get rid of the tiger, as we annihilate the rattlesnake, as we *sruch* the tarantula. Those who tell you that they are not prepared for this or other conquests which benefit you are the ones who have interest in delaying your emancipation so that in the mean time they can live at your expense."

and said newspaper of said indecent character was so deposited and caused to be deposited in said United States postoffice at said city of Los Angeles, to be transmitted by the postoffice establishment to many and divers persons, within the United States of America, and within the Republic of Mexico, the names of which divers persons are unknown to the grand jurors, and many copies of said newspaper were so deposited and caused to be deposited in said United States postoffice at one time and as one act to be distributed by said postoffice establishment and delivered respectively, a copy each, to said many and divers persons.

Contrary to the form of the Statutes of the United States in such case made and provided, and against the peace and dignity of the said United States.

ALBERT SCHOONOVER,
United States Attorney.

M. G. GALLAHER,
Assistant United States Attorney. [20]

[Endorsed]: No. 1071. United States District Court, Southern District of California. The United States of America vs. Enrique Flores Magon, Ricardo Flores Magon, and Wm. C. Owen. Indictment for Viol. Sec. 211, Penal Code of 1910. Depositing in the United States Mails Indecent Matter. A True Bill. S. J. Brown, Foreman. Names of witness examined before the said grand jury on finding the foregoing Indictment: _____. Presented and filed in open court, this 18th day of February, A. D. 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. _____, United States Attorney. T. [21]

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

No. 1071—CRIM.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

ENRIQUE FLORES MAGON, RICARDO
FLORES MAGON et al.,

Defendants.

Verdict.

We, the grand jury duly impanelled in the above-entitled cause, find the defendant, Enrique Flores Magon, Not Guilty as charged in the first count of the Indictment, Guilty as charged in the second count of the Indictment, and Guilty as charged in the third count of the Indictment; and we find the defendant,

Ricardo Flores Magon, Not Guilty as charged in the first count of the Indictment, Guilty as charged in the second count of the Indictment, and Guilty as charged in the third count of the Indictment.

Los Angeles, California, June 6, 1916.

JOHN HORNER,
Foreman.

[Endorsed] : No. 1071-Crim. U. S. District Court, Southern District of California, Southern Division. The United States of America, vs. Enrique Flores Magon et al. Verdict. Filed Jun. 6, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. [22]

Instructions Requested by Defendant.

REQUESTED BY DEFENDANTS:

Instruction No. II.

In like manner it is your duty to examine carefully the alleged **objectionable** matter as set out in the second count of the indictment, and if, after a full, careful and conscientious consideration of said alleged **objectionable** matter as set out in the second count, you and each of you are not convinced beyond a reasonable doubt, that said alleged **objectionable** matter is of a character tending to incite murder or assassination, then you must acquit the defendants on the second count of the indictment.

Instruction No. III.

In like manner it is your duty to examine carefully the alleged **objectionable** matter as set out in the third count of the indictment, and if, after a full,

careful and conscientious consideration of said alleged **objectionable** matter as set out in the third count, you and each of you are not convinced beyond a reasonable doubt, that said alleged **objectionable** matter is of a character tending to incite murder or assassination, then you must acquit the defendants on the third count of the indictment.

Instruction No. V.

If, however, after a full, fair and candid consideration of the alleged objectionable matter as set out in the second count of the indictment, you and each of you are satisfied beyond a reasonable doubt that said alleged objectionable matter is of a character tending to incite murder or assassination, it will then become your duty to consider whether the defendants, or either of them, on or about December 18th, 1915, did knowingly, wilfully, unlawfully and feloniously deposit or cause to be [23] deposited in the postoffice for mailing and delivery such objectionable matter as set out in the second count of the indictment, knowing it to be of a character tending to incite murder or assassination, and if you, or either of you, after a full, fair and candid consideration of all the evidence in the case and of these instructions, have a reasonable doubt that the defendant Ricard Flores Magon on or about December 18th, 1915, did knowingly, wilfully, unlawfully and feloniously deposit, or cause to be deposited in the postoffice for mailing and delivery the objectionable matter set out in the second count, knowing it to be of a character tending to incite murder or assassination, then it will be your

duty to acquit the defendant Ricardo Flores Magon on the second count of said indictment.

Instruction No. VI.

If, however, after a full, fair and candid consideration of the alleged objectionable matter as set out in the third count of the indictment, you and each of you are satisfied beyond a reasonable doubt that said alleged objectionable matter is of a character tending to incite murder or assassination, it will then become your duty to consider whether the defendants, or either of them, on or about December 18th, 1915, did knowingly, wilfully, unlawfully and feloniously deposit or cause to be deposited in the postoffice for mailing and delivery such objectionable matter as set out in the third count of the indictment, knowing it to be of a character tending to incite murder or assassination, and if you, or either of you, after a full, fair and candid consideration of all the evidence in the case and of these instructions, have a reasonable doubt that the defendant Ricardo Flores Magon on or about December 18th, 1915, [24] did knowingly, wilfully, unlawfully and feloniously deposit, or cause to be deposited in the postoffice for mailing and delivery the objectionable matter set out in the third count, knowing it to be of a character tending to incite murder or assassination, then it will be your duty to acquit the defendant Ricardo Flores Magon on the third count of said indictment.

Instruction No. VIII.

If, however, after a full, fair and candid consideration of the alleged objectionable matter as set out in the second count of the indictment, you and each of

you are satisfied beyond a reasonable doubt that said alleged objectionable matter is of a character tending to incite murder or assassination, it will then become your duty to consider whether the defendants, or either of them, on or about December 18th, 1915, did knowingly, wilfully, unlawfully and feloniously deposit, or cause to be deposited in the postoffice for mailing and delivery such objectionable matter as set out in the second count of the indictment, knowing it to be of a character tending to incite murder or assassination, and if you, or either of you, after a full, fair and candid consideration of all the evidence in the case and of these instructions, have a reasonable doubt that the defendant Enrique Flores Magon on or about December 18th, 1915, did knowingly, wilfully, unlawfully and feloniously deposit, or cause to be deposited in the postoffice for mailing and delivery the objectionable matter set out in the first count, knowing it to be of a character tending to incite murder or assassination, then it will be your duty to acquit the defendant Enrique Flores Magon on the first count of said indictment. [25]

Instruction No. IX.

If, however, after a full, fair and candid consideration of the alleged objectionable matter as set out in the third count of the indictment, you and each of you are satisfied beyond a reasonable doubt that said alleged objectionable matter is of a character tending to incite murder or assassination, it will then become your duty to consider whether the defendants, or either of them, on or about December 18th, 1915, did knowingly, wilfully, unlawfully and feloniously de-

posit, or cause to be deposited in the postoffice for mailing and delivery such objectionable matter as set out in the third count of the indictment, knowing it to be of a character tending to incite murder or assassination, and if you, or either of you, after a full, fair and candid consideration of all the evidence in the case and of these instructions have a reasonable doubt that the defendant Enrique Flores Magon on or about December 18th, 1915, did knowingly, wilfully, unlawfully and feloniously deposit, or cause to be deposited in the postoffice for mailing and delivery the objectionable matter set out in the third count, knowing it to be of a character tending to incite murder or assassination, then it will be your duty to acquit the defendant Enrique Flores Magon on the third count of said indictment.

Instruction No. XI.

You are instructed that in order to convict the defendant Ricardo Flores Magon upon the second count of this indictment, it is not sufficient for you to be satisfied beyond a reasonable doubt that the objectionable matter contained in the second count is of a character tending to incite murder or assassination and that the defendant Ricardo Flores Magon wrote the [26] same to be printed and published in the newspaper "Regeneracion," but in order to authorize the conviction of said Ricardo Flores Magon upon the second count of the indictment it is necessary for you to be satisfied beyond a reasonable doubt that the said Ricardo Flores Magon either deposited or caused to be deposited said newspaper containing said objectionable matter in the postoffice for mailing and de-

livery, and if you are not satisfied beyond a reasonable doubt that the said Ricardo Flores Magon did deposit or cause to be deposited in the postoffice for mailing and delivery said objectionable matter, knowing it to be of a character tending to incite murder or assassination, then it is your duty to acquit said Ricardo Flores Magon upon the second count of said indictment.

. Instruction No. XII.

You are instructed that in order to convict the defendant Ricardo Flores Magon upon the third count of this indictment, it is not sufficient for you to be satisfied beyond a reasonable doubt that the objectionable matter contained in the third count is of a character tending to incite murder or assassination and that the defendant Ricardo Flores Magon wrote the same to be printed and published in the newspaper "Regeneracion," but in order to authorize the conviction of said Ricardo Flores Magon upon the third count of the indictment it is necessary for you to be satisfied beyond a reasonable doubt that the said Ricardo Flores Magon either deposited or caused to be deposited said newspaper containing said objectionable matter in the postoffice for mailing and delivery, and if you are not satisfied beyond a reasonable doubt that the said Ricardo Flores Magon did deposit or cause to be deposited in the postoffice [27] for mailing and delivery said objectionable matter, knowing it to be of a character tending to incite murder or assassination, then it is your duty to acquit said Ricardo Flores Magon upon the third count of said indictment.

[Endorsed] : No. 1071-Crim. U. S. District Court, Southern District of California, Southern Division. The United States of America vs. Enrique Flores Magon et al. Instructions Requested by Defendants. Filed Jun. 6, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. [28]

At a stated term, to wit, the January term, A. D. 1916, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the court-room thereof, in the City of Los Angeles, on Thursday, the Twenty-second day of June, in the year of our Lord, one thousand nine hundred and sixteen. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. 1071—CRIM. S. D.

THE UNITED STATES OF AMERICA,
Plaintiffs,
vs.
ENRIQUE FLORES MAGON et al.,
Defendants.

Minutes of Court—June 22, 1916—Judgment and Sentence.

This cause coming on this day for the sentence of defendants Enrique Flores Magon and Ricardo Flores Magon on the second and third counts of the indictment; Mansel G. Gallaher, Esq., and Robert O'Connor, Esq., Assistant U. S. Attorneys, appearing as counsel for the United States; defendants En-

rique Flores Magon and Ricardo Flores Magon being present in custody of the U. S. Marshal, with their counsel. J. H. Ryckman, Esq., I. Benjamin, one of the official shorthand reporters of this court, being present and acting as such; and the Court having read a statement or conclusions regarding the sentences of defendants, the Court thereupon pronounces judgment upon said two defendants for the offenses of which they now stand convicted, namely, depositing in the U. S. Mails indecent matter, in violation of Section 211 U. S. Criminal Code, as follows, to wit: The judgment of the Court is, that the defendant Enrique Flores Magon, on each of said two counts of the indictment, to wit, the second and third counts thereof, pay a fine of \$1,000, and be imprisoned in the United States Penitentiary at McNeil Island, [29] State of Washington, for the term of three years, said terms of imprisonment to begin and run concurrently, and that the defendant Ricardo Flores Magon, on each of said second and third counts of the indictment, pay a fine of \$1,000, and be imprisoned in the United States Penitentiary at McNeil Island, State of Washington, for the term of one (1) year and one (1) day, said last-mentioned terms of imprisonment to begin and run concurrently; and it is further ordered, good cause appearing therefor, that the bail of defendant Ricardo Flores Magon be, and the same is hereby reduced to \$3,000, the bail of defendant Enrique Flores Magon to remain as at present in the sum of \$5,000; and a petition for a writ of error having been presented to the Court on behalf of defendants, together with

assignments of error and proposed order granting writ of error, and certain changes in form having been suggested by the Court, defendants are directed to redraft their proposed order allowing writ of error for consideration of the court hereafter.

Defendants are remanded to the custody of the U. S. Marshal. [30]

*In the District Court of the United States in and for
the Southern District of California, Southern
Division.*

No. 1071—CRIMINAL.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

ENRIQUE FLORES MAGON and RICARDO
FLORES MAGON,

Defendants.

Bill of Exceptions.

BE IT REMEMBERED that upon the arraignment of the defendants Enrique Flores Magon and Ricardo Flores Magon in said cause at the Jan'y term of said court on the 26th day of February, A. D. 1916, the said defendants, by their counsel, demurred to the said indictment, said demurrer, omitting the caption, being as follows, to wit:

Demurrer to Indictment.

“Come now the defendants, Enrique Flores Magon and Ricardo Flores Magon, by their attorney

J. H. Ryckman, and demur to the indictment herein for the following reasons, to wit:

I.

That the facts stated in said indictment do not constitute an offense against the United States.

II.

That the matters and things set out in the first count of said indictment as having been printed and published in the newspaper "Regeneracion" are not of a vile or filthy or indecent character, nor of a character tending to incite in the minds of persons reading the same murder and assassination, or murder or [31] assassination within the jurisdiction of the United States, or elsewhere.

III.

That the matters and things set out in the second count of said indictment as having been printed and published in the newspaper "Regeneration" and not of a vile or filthy or indecent character, nor of a character tending to incite in the minds of persons reading the same murder and assassination, or murder, or assassination within the jurisdiction of the United States, or elsewhere.

IV.

That the matters and things set out in the third count of said indictment as having been printed and published in the newspaper "Regeneracion" are not of a vile or filthy or indecent character, nor of a character tending to incite in the minds of persons reading the same murder and assassination, or mur-

der, or assassination within the jurisdiction of the United States, or elsewhere.

J. H. RYCKMAN,
Attorney for Defendants Enrique Flores Magon and
Ricardo Flores Magon.

which said demurrer was overruled by the Court and denied, to which ruling of the Court the defendants and each of them then and there duly excepted; and the said defendants, being then and there arraigned in person, appeared and pleaded not guilty to said indictment.

BE IT REMEMBERED FURTHER, that on May 31st, 1916, the defendants Enrique Flores Magon and Ricardo Flores Magon, by their counsel, moved to quash said indictment, said motion to quash, omitting the caption, being as follows, to wit: [32]

**Motion to Quash Indictment and Order Denying
Same.**

“Now come the defendants Enrique Flores Magon and Ricardo Flores Magon before trial and move the Court to quash the indictment herein for the following reasons, to wit:

1. Because it is not alleged in said indictment that the newspapers, or any of them alleged to have been deposited in the postoffice by the defendants to be transmitted by the postoffice establishment to divers persons were addressed to such persons, or any persons.

2. Because it is not alleged in said indictment that said newspapers so deposited by the defendants were nonmailable.

3. Because it is not alleged in said indictment that these defendants, or either of them, knew that the newspapers, or any of them alleged to have been deposited by them in the postoffice contained indecent matter, nor is it alleged that the defendants, or either of them knew the import of said alleged indecent matter, nor that they, or either of them, knew that said matter was of a character tending to incite murder or assassination, nor is it alleged in said indictment that these defendants, or either of them, were the owners, or managers, or editors, or publishers of said newspaper, from which it could be inferred that they knew said newspaper contained indecent matter or matter tending to incite murder or assassination.

4. Because it is not alleged in said indictment that the objectionable matter is, or was of a character tending to incite murder or assassination.

5. Because the indictment is duplicitous in this, that in each count thereof, it charges an indefinite number of distinct offenses. [33]

WHEREFORE, these defendants pray that the indictment herein be quashed.

J. H. RYCKMAN,

Attorney for Enrique Flores Magon and Ricardo Flores Magon."

which said motion to quash was by the Court denied, to which ruling of the Court the defendants and each of them then and there excepted.

BE IT FURTHER REMEMBERED, that on the 31st day of May, A. D. 1916, being one of the days of the — term of said court, this cause came on

to be heard before his Honor, Judge Oscar A. Trippet, one of the Judges of said court, and a jury therein duly sworn to try said cause and the United States to maintain the issues of its part, called as witnesses: Alva Dougan, H. Treosti, Frank C. Mulkey, Irving A. Compton, J. D. Spence, Lucile Norman, C. T. Walton, Jacob D. Kaufman, W. Andrews, M. I. Learner, Jas. Griffes, G. Wilshire, Frank Rooney, Aurther Fredgren, Roy E. Ashcroft, Loyal Jas. St. John, Jas. A. Chapman, and F. G. Thompson, who, being duly sworn, testified severally as follows:

(The defendant Enrique Flores Magon having taken the stand as witness in his own behalf and having admitted that on September 25th, 1915, November 6th, 1915, December 18th, 1915, and during the whole of the months of September, October, November and December, 1915, he was the owner the editor and the manager of the newspaper "Regeneracion" and caused copies of the said newspaper containing the alleged nonmailable matter set out in the several counts of the indictment to be deposited in the United States mail for distribution and the defendant Ricardo Flores Magon also having taken the stand as witness in his own behalf and having admitted that he wrote all of said alleged nonmailable [34] matter for the said newspaper "Regeneracion," the voluminous testimony of the witnesses for the Government is not herein set out.)

Here the Government rested.

And thereupon to maintain the issues on the part of the defendants, BE IT REMEMBERED that the

defendant Enrique Flores Magon, being called as a witness in his own behalf and on behalf of his brother Ricardo Flores Magon, testified in this case as follows:

Testimony of Enrique Flores Magon, in His Own Behalf.

My name is Enrique Flores Magon; I reside in Los Angeles; I am a newspaper writer, editor and publisher; I know of the Manifesto of the Mexican Liberal Party of September 23d, 1911; I was one of the signers with my brother Ricardo, and Anselmo L. Figueroa, Librado Rivera and Antonio de P. Araujo; I read and speak Spanish and English; the Manifesto was written in Spanish and was published in my newspaper "Regeneracion" in an English translation June 23d, 1914, and the translation is a faithful translation; I now own the newspaper "Regeneracion"; I have been connected with it as a writer since 1900; I have been connected with many other papers that I used to print in Mexico City and they were suppressed by the former President of Mexico, Porfirio Diaz on account of being opposed to his regime; I have been in charge of this paper "Regeneracion" since Anselmo L. Figueroa died, June 14th, 1915; "Regeneracion" is the official organ of the Mexican Liberal Party; "Regeneracion" as the official organ of the Mexican Liberal Party advocates the principles set up in the Manifesto of September 23d, 1911; when Anselmo L. Figueroa died on account of the ill treatment we received at McNeil's Island where we were sent for 23 months on bribed

(Testimony of Enrique Flores Magon.)

witnesses and forged documents; Figueroa got so sick that it [35] prevented him from being able to attend to the business of the paper; then I became the business manager of this paper; I have been a writer of the paper sixteen years; the policy of "Regeneracion" has always been the policy of the aims of the Mexican Liberal Party; I have been many times persecuted, but convicted only once in this country on June 25th, 1912, for violation of the neutrality laws between this country and Mexico; outside of this conviction I have never been convicted for any other offenses in the United States; on than conviction I was sentenced to McNeil's Island for 23 months; I was released from McNeil's Island January 19th, 1914; I came back right away to Los Angeles and took up again my editorial work in "El Regeneracion," and besides,, I took up the work of farming, I produced vegetables in order to sell them out and help myself for living, because I didn't receive not a cent from the paper for my contributions at that time, so in order to make my living; I have to work as a farmer, besides working as a writer; my brother Ricardo was in the penitentiary at the same time I was and was discharged at the same time; since our discharge he has been collaborating to "Regeneracion" and, at the same time to make his living, he has been working in farm work; that is his present means of living; before I took over the ownership of "Regeneracion" Ricardo just wrote copy to hand to the editor so that the editor could see whether it was fit or not for publication,

(Testimony of Enrique Flores Magon.)

and that the editor would publish what he might see fit for publication; as to salary or compensation before I became owner Ricardo was on the same basis as myself; he did not receive a single cent from the paper, but made his own living from farming; since I have owned the paper Ricardo has just been collaborating for the paper; by [36] that I mean writing articles that he hands me for me to see the articles and find out if I see fit for the policy of the paper, and if I would care to use them or not; I did not pay him a single cent for those services; he worked in farming in order to make his own living; I myself was the final authority as to what appeared in "Regeneracion" in September, October, November and December, 1915; I am the only one who received all the copy that might come to the paper; I revised the copy; I look at it, and whenever I find that any copy is no good to be printed I take it away and throw it into the basket; and the material I find good to be given to the printer, I, myself, would go and give all the boys in the printing-shop, and order them to set up that article and print it; my brother Ricardo had no interest in any profits that the paper makes, nor does he share in any losses that the paper has; as to the circumstances under which I was arrested: I was at home, in my own private home, when somebody came there and told me that the police was outside waiting for me, looking for me. Then I went out to see what this gentleman wanted of me. When I came out, I found Detective Leon and then he collected the boys and said, "These want to speak

(Testimony of Enrique Flores Magon.)

to you." "All right, let's go." And he took me to the officers and there I found several detectives, and amongst them, Mr. Thompson. When I reached there, Mr. Thompson said to me, "You are under arrest." I told him, "Why?" "That is not your business. You are under arrest." "Well, I think I have a perfect right to know why I am under arrest. I think I have a perfect right to request from you to show me the warrant for my arrest." "Yes, I got the warrant here—(indicating)." "Well, it does not prove to me anything at all. Therefore, I beg you to show me the warrant." "Oh, if *you* to see it, I will show you the warrant." And he pulled out the warrant and started to read the warrant. Well, I saw the warrant. I convinced myself that it was a legal order, [37] and then I said, "All right, I am ready to go to jail, but I would like to get my hat and coat," for I was in my shirt sleeves—"I would like to get my hat and coat." "No, you don't need anything." "Well, sir, I would like to get my hat and coat in order to go to jail." "Well, somebody heard me asking for my hat and coat, and they came with the hat and coat in their hands to hand it to me, and when I reached to take my coat and my hat, this Mr. Thompson, that seems to me was scared, perhaps somebody told him that we were roughnecks, he grabbed me by the arm and shoved me back. "Get back here, you son of a bitch." Then, I say, "Gentlemen, that is not gentlemanly to treat a man," and then he say, "If you don't like that, then take this," and hit my head. Of course, I

(Testimony of Enrique Flores Magon.)

found myself assaulted by this man, although he was —although he was a representative of the authority, for I thought I had a perfect right to protect myself, and I tried to strike him back, although I recognize I am a weak man, because at that time it was four days that I got up from bed where I was sick; I was weak; therefore, despite my weakness, I thought I should resist his vicious assault by this man, and I tried to strike him back, but other detectives, I think about five of them, jumped on my back and grabbed me by my back and overpowered me right away. I could do nothing. I was sick, and when these overpowered me, then this Mr. Thompson came with his revolver, and struck me two times more on my head until I was bathed with my blood from my head to my toes. My shirt was torn to pieces, and then seeing this man was still hitting me, in order to throw him away, and that I saw he would kill me sure, I tried to kick him away, when I was already overpowered by the other men. Then he stopped hitting me and I was dragged from the [38] house without even being allowed to tell goodbye to my people and my children and my wife. They dragged me out then like they would drive away wild beasts. They took me away from my family, from my home and my family just the same as they would take a wild beast, and this man took me without even hearing my protest because of his bad behavior with me; after that I was taken to the hospital because I was bleeding freely; I got a big scar, but he put eight stitches in my head, and it

(Testimony of Enrique Flores Magon.)

stopped bleeding, and after that I was taken to the marshal's office; I had not even a pen-knife; I had not even a pin on my possession, as can be proven by the authorities in the jail when I came to the jail, I got nothing on me; in fact, I am never armed; that was the first time I saw Thompson; I had no trouble with officers before that; I did not use the words, "To hell with the President" or anything relating to that at all; I did not use any of that vile, obscene and filthy language which Thompson said I used; when I got down to the marshal's office they took me to a room inside of the office, when you come inside, to the left hand, after you cross one room; here on the same floor, just in the same place they keep us now when they take us here. First, they took us to a room, and after we were called to another room to the right, and then we met this gentleman who is sitting down here, Mr. Walton, and when we entered, Mr. Walton say, "Are you the men charged with the publication of a Mexican newspaper?" And I answered, "Yes." Then he said, "I know you have got in trouble there, and I don't like that you might think that here we are roughnecks. I don't want that you might have a bad impression of my office. That is why I want to speak to you. Are you willing to speak to me?" "Yes, sir, we are willing to speak to you." I was [39] myself the one who was doing the talking, because my brother does not speak very well the English, at least, as I do speak the English, and I was doing all the talking; then, the gentleman said, "Well, you seem to be getting

(Testimony of Enrique Flores Magon.)

very often in trouble." I said, "Yes, we always get in trouble. We have been in trouble very long years ago, since we were in Mexico. We have been in trouble here in the United States, and expect to be always in trouble, because we are fighting for the benefit of our countrymen. We are fighting for the living of the Mexican people. We are striving to gain their freedom, their social, economic and political freedom, so that all the Mexican people might become a people, a free people, and people, who would have all the means for happiness, all the means for living, all the means for to enjoy the honest joys of life." I am speaking as if I were speaking to Mr. Marshal there. I said: "We are striving to better the conditions of the Mexican people, and that is why we always get in trouble, because our fight is against the big interests of the bourgeois. That means the big interests, and we are fighting for the freedom of the people, and therefore we are against the big interests, and the big interests, of course, don't want us to continue this fight, because then if we would ever succeed, they will have no more people to work for them and enrich them. That we are striving to better the conditions of the Mexican people, and for that we knew we expect to get in trouble, because we are fighting the interests of the capitalists, like Mr. Rockefeller, Mr. Morgan, Mr. Guggenheim, Mr. Otis, Mr. Hearst, all those fellows who have profited by the regime of Porfirio Diaz. For instance, Mr.

(Testimony of Enrique Flores Magon.)

Otis got two million acres of land in Lower California—very rich land— [40]

Q. (By the COURT.) Did you tell that to Mr. Walton?

A. Yes, sir. They are rich lands, and this land was given to Mr. Otis just for a song, as they say in English, in order to have him boom the Diaz administration. Mr. Hearst got three million of acres, very rich land, too, in Chihuahua State, with the same purpose, to have him boom Porfirio Diaz's administration. Porfirio Diaz was a good man, although he was a tyrant. In the same way, through concessions here, concessions there, over twenty million acres of land have been given away to the capitalists of this country. This land has been taken away from the Mexican people by means of force. Whenever they opposed the land being taken away from them, they have been shot on the street, or in their homes by the soldiers of Porfirio Diaz, and those who wanted to go home by peaceful means were banished from night to day. We don't know what became of them, only their graves known. After everything was taken away from the hands of the Mexican people, and they lead up to American plutocracy, we were stripped of everything that belonged to us until we became slaves without a single cloth of any kind to lay down our tired heads after sixteen—eighteen hours of hard work every day for 37 cents a day; we became peons; that is why we are fighting against oppression; that is why we are fighting the tyrants in Mexico, the oppressors and exploiters of

(Testimony of Enrique Flores Magon.)

our race, because we want the Mexican people to be treated like men, that they enjoy all the joys of life, from the very moment that they have a perfect right, since they were born, in this earth. We are fighting for the freedom of the Mexican people. We are fighting for their liberation, so that they might become independent, so that they might have economic, social and political freedom, but chiefly economic freedom, because he who has economic freedom has political and social freedom too. Well, you [41] see, we have gone among our people; we ourselves, are Indian Mexicans. We are Indians; we are peons; we belong to the peon class, and that is why we want to have all our brothers to come into their own again; that is why, when we have seen so much injustice, so much oppression, such a terrible tyranny on the Mexican people, we became anarchists; that means we are not like other people; we are not bomb-throwers; we are not vile anarchists as the "Times" always says that we are, in order to misrepresent us to the people, and have the people prejudiced against ourselves. No. We became anarchists and we are anarchists because we want peace on earth, because we want, as we recognize, that all human beings should be friends, instead of being enemies, instead of fighting each other, as now; that is what I mean by anarchy, that we love peace; we love brotherhood and goodwill amongst all the human race, not only the Mexican race, but all the human race, and we want that all human beings love, and have the means to live and enjoy life like Mr.

(Testimony of Enrique Flores Magon.)

Guggenheim or Mr. Rockefeller, but everybody like everybody who would be willing to work with his own hand and produce. I told that to Mr. Marshal, and I explained to him for that reason we were always persecuted. For that reason we were thrown into jail each moment. In Mexico every moment, so many of them that forgot how many. After, when we were prohibited by Mr. Diaz to publish any paper in Mexico, we say, "Well, we are powerless here in Mexico. Then, let us go to the United States. There in the United States they enjoy freedom. That is the land of the free; in the United States there is refuge for political refugees; their constitution grants freedom to all, and of course, freedom of press and freedom of speech, so let us go over there and enjoy the freedom, the [42] freedom granted there to the people," and we came here. There was not one year that we were in this country but that we were thrown into jail again. We didn't find the freedom here that we expected. I told the marshal that while we were in San Antonio, a hired assassin tried to assassinate my brother, when he was there with his dagger in his hand to stab him; I knocked him down, inside my own home; I knocked this man down, and I was taken to jail and sentenced to three months, \$30 fine and costs of the proceedings, because I protected my brother's life; I told him, too, here the last time we were convicted for a felony, that the Assistant District Attorney, Dudley W. Robinson, who then was taking the place of this gentleman

(Testimony of Enrique Flores Magon.)

here, Mr. Gallaher—I told him that these gentlemen went and bribed witnesses, and that they had come and swore to an affidavit before a notary public in which he stated that he was bribed by Mr. Dudley W. Robinson, that he was paid \$10 a day for a year; in the meantime, while we were out on bond, and waiting for our trial, he got \$10 a day; he got besides \$300 cash the day we were convicted as a premium to our conviction, and he, himself, acknowledged that he went and bribed many other witnesses. I told him that these documents, because there were many affidavits on that line of all the Government witnesses, those affidavits were sent to Mr. Wilson while we were in McNeil's Island, already, and Mr. Wilson read the affidavits and then he say to Senator Smith from Arizona, "I am perfectly convinced that the Magons are innocent, but it is not my policy to let them free," and we were not let free; it was denied, our petition for pardon. I told him that after a while we were denied the benefit of the parole. We applied for parole, although the warrant there gave [43] a very strong recommendation in our behalf, Mr. Johnson, the director of paroles, came to us and said, "Gentlemen, I am very sorry for you. I am convinced that you are innocent, but I have received instructions from Washington not to grant you parole," and we have to serve the full length of our sentence. Then we came out and got again in trouble, because we are still fighting for the freedom of our country, of our people, and that is why I told Mr. Marshal when I talked with him, I

(Testimony of Enrique Flores Magon.) told him, "What do you suppose, Mr. Walton—or Mr. Marshal, that Tom Paine, Tom Jefferson and Franklin had received the same treatment in France, the same treatment that we are receiving in this country, then United States would not exist, there would not be the land of the free at all. This would be something like when these were under England. I finished with that, my talk with Mr. Walton. Every article that is written by my brother, before going to the printers is given to me. As to all the rest of the articles, I know that I would have inspected all the writings, and would have to decide which one must be published, and which one must not be, so the one I choose for publication I hand up to the printers, and the one that I don't choose for publication, I throw them into the basket, because I have no use for them; so these articles pass under my eyes before being sent to the printers and were O. K.'d by me; I am the editor, the owner and the publisher, and business manager, and everything in this paper. This paper belongs to me; and therefore I am the boss of it; no one else has authority there. Since June 14th, 1915, the paper has been in my hands, and I have been and am the owner of it; until to-day the paper is still mine; Ricardo works for the paper—he writes articles, and I am the one to choose them and see if [44] they are fit for my paper, and to put them in my paper; I have never done anything to promote hatred between the United States and Mexico; I have been carrying on this propaganda through the "Regeneracion" for about

(Testimony of Enrique Flores Magon.)

sixteen years; my brother Ricardo wrote for the paper; he always has done the same way he is doing now, writing and giving the copy to the editor of the paper; the articles that have his name at the bottom are the ones he wrote; those that are approved by the editor have his name on the bottom of it, and they are the ones he wrote.

Q. (By Mr. GALLAHER.) And those articles were written by him, the defendant Ricardo Flores Magon, and handed to you for publication, if you approved them, in the "Regeneracion"?

A. Yes, when I have been the editor of the paper and the owner of it, yes, it has been always handed to me for my approval.

Q. And that paper during all the time that he was writing articles for it was transmitted through the United States mails? A. Yes.

Q. (By Mr. GALLAHER.) What was done with the papers in the months of September, October, November and December, 1915, after they were published and printed?

A. I did send them through the mails.

Q. (By Mr. GALLAHER.) Now, your brother worked at the office, and frequently made contributions to the paper?

A. He did; he used my office if he wanted to write anything on my typewriter.

Q. Well, did he do it there?

A. Of course he has to come there to write his articles.

Q. Yes, and he delivered them right there?

(Testimony of Enrique Flores Magon.)

A. And delivered them to me for my inspection.

[45]

Q. Do you know whether or not he read the "Regeneracion" himself, during those months?

A. I don't know, I never was watching him.

Q. You don't know, do you?

A. I don't know. He may have read them and he might not. I am such a busy man that I cannot be looking into the others' actions, you know.

Q. Your positive answer, then, to the question is that you don't know whether Ricardo read them or not? A. Yes, sir; that is the answer.

BE IT REMEMBERED FURTHER that while testifying in his own behalf, the following question was propounded to Enrique Flores Magon by his counsel, to wit:

"When you deposited copies of your newspaper 'Regeneracion' containing the alleged nonmailable matter set out in the second and third counts of the indictment herein, in the mail for distribution, or caused the same to be done, did you thereby intend to incite murder or assassination?" To which question counsel for the Government objected on the grounds that the same was incompetent, immaterial and irrelevant, whereupon the Court sustained the objection and the defendant Enrique Flores Magon then and there excepted.

BE IT REMEMBERED FURTHER, that thereupon Ricardo Flores Magon, one of the defendants herein, being called as a witness on behalf of himself and his brother Enrique Flores Magon, being first duly sworn, testified as follows in this cause.

Testimony of Ricardo Flores Magon, in His Own Behalf.

My name is Ricardo Flores Magon; I am a brother of the defendant Enrique Flores Magon; I reside in Los Angeles and have resided here since 1906; I was arrested on this charge February 18th, 1916, and have been confined in the jail and the hospital [46] since that time; I have been undergoing treatment in the hospital for diabetes; at the time of my arrest my business was that of a writer; I was not employed by anyone; I write for several publications here and abroad, including "Regeneracion"; I have been writing for "Regeneracion" for several years; I have never received any salary for my contributions to "El Regeneracion" nor any pay at all, nor do I share in the profits. My brother Enrique Flores Magon was the owner and publisher of "Regeneracion" from September 1st, 1915, to January 1st, 1916; I had no understanding or agreement with my brother concerning the printing of any article I wrote; I gave the copy to my brother and that is all; I did not tell him what to do with my contributions except to say "Here is my copy. If the copy is good, you do what you please"; I was arrested at the office of the newspaper "Regeneracion" by Detective Leon and another gentleman that I do not know; there were about twelve officers; I was not armed; I was present when my brother Enrique Flores Magon was arrested by Deputy Marshal Thompson; I heard what took place between Deputy Marshal Thompson and my brother at the time of

(Testimony of Ricardo Flores Magon.)

the arrest; Thompson told my brother he was arrested and then my brother asked him to allow him to get his coat and hat, and somebody handed the coat to my brother; I feel sick from my sickness, diabetes; I have been under treatment for that, but my treatment has stopped; I feel my brain is tired; physically I feel pretty bad; I have been sick about five or six months; the Government physician has examined me; I was sent to the hospital under his instructions and the instructions of the Court and was brought from the hospital here for this trial; at the time of our arrest my brother moved to take his hat and coat; Mr. Thompson pushed him roughly and I saw Thompson beat with the butt of his pistol my brother's head; that is what I saw; [47] he asked Thompson for a warrant and Thompson answered that it was not necessary, but finally he acceded and read one warrant, and my brother said, "All right; I am at your disposal"; I was distant from my brother and Thompson at the time of our arrest about twelve feet in the same room, and heard all that transpired between my brother and Thompson; my brother used no vile or obscene or filthy language to Thompson on that occasion; Thompson's testimony yesterday concerning what my brother said is not true; my brother said nothing that could mean to damn the President; my brother used none of the foul language that Thompson attributed to him yesterday; I was present at the marshal's office after I was arrested; I heard my brother testify yesterday as to what occurred in the marshal's office;

(Testimony of Ricardo Flores Magon.)

I heard Mr. Walton testify yesterday as to what occurred there; what my brother said on that occasion was substantially the truth; I read English; I wrote the articles in "Regeneracion" of dates September 25th, 1915, and October 2d, 1915, containing all of the alleged nonmailable matter set out in the second count of the indictment herein, the one being headed "the Texas Uprising," and the other being headed "The Carranza Reforms"; I also wrote the whole of the article appearing in the newspaper "Regeneracion" November 6th, 1915, containing all of the al-legal nonmailable matter set out in the third count of the indictment herein; I wrote all of said articles in the Spanish language; they were printed in Spanish in said newspaper "Regeneracion," owned and edited at the time by my brother Enrique Flores Magon; all of those articles have been introduced in evidence in this case in our behalf in correct English translations and read to the jury; I have examined and compared the English translations of these articles introduced in evidence in this case with the original articles as written in Spanish by [48] me, and the English translations are substantially correct; I have an education in the Spanish language; I attended schools and colleges in Mexico for sixteen years.

BE IT REMEMBERED FURTHER that while testifying in his own behalf, the following question was propounded to Ricardo Flores Magon by his counsel, to wit:

"Did you intend, or was it your purpose, in writ-

ing for publication in "Regeneracion," the alleged nonmailable matter set out in the second and third counts of the indictment herein, to incite murder or assassination?" To which question counsel for the Government objected on the grounds that it was incompetent, immaterial and irrelevant, whereupon the Court sustained the objection, to which ruling of the Court the defendant Ricardo Flores Magon then and there excepted.

BE IT REMEMBERED FURTHER that the defendants introduced in evidence in their own behalf the Manifesto of the Mexican Liberal Party, in words and figures as follows, to wit:

MANIFESTO OF THE MEXICAN LIBERAL PARTY.

MEXICANS:

The Organizing Junta of the Mexican Liberal Party views with sympathy your efforts to put in practice the lofty ideals of political, economic and social emancipation, the reign of which on earth will put an end to that strife between man and man which has lasted long enough and has its origin in that inequality of fortunes which springs from the principle of private property.

To abolish this principle means the annihilation of all the political, economic, social, religious and moral institutions composing the environment within which are smothered the free initiative and the free association of human beings, who, if [49] they wish to save themselves from perishing, are obliged to set on foot a cruel competition from which

there issue triumphant not the best, not the most self-sacrificing, not the most gifted, physically, morally or intellectually, but the most cunning, the most egotistic, the least scrupulous, the hardest hearted, those who place their own personal well-being above every consideration of human solidarity and human justice.

But for the principle of private property Government would have no reason for its existence, since it is needed only to keep in check the complaints of the disinherited or their rebellions against those who have got into their grasp the social wealth. Neither would there be any reason for the existence of the Church, whose exclusive object is to strangle in the human being, by practicing patience, resignation and humility, his innate tendency to rebel against oppression and exploitation; silencing the cries of the most powerful and fruitful instincts with the practice of penances that are immoral, cruel and injurious to personal health. In order that the poor may not aspire to the enjoyment of this earth, and constitute themselves a danger to the privileges, of the rich, it is promised the humblest, the most resigned and patient, a heaven dangled in the infinite, away there beyond the stars which they can barely see.

Capital, Authority, the Clergy—here we have the sombre trinity which makes this beauteous earth a paradise for those who have succeeded, by cunning, violence and crime, in getting into their claws what the sweat, the blood, the tears and the sacrifice of

thousands of generations of toilers have produced; and a hell for those who, with arm and brain, till the soil, set the machinery in motion, build the houses and transport [50] the products; the result being that humanity is divided into two classes whose interests are diametrically opposed—the capitalish class and the working class; the class that owns the land, the machinery of production and the means of transportation, and the class that has only its arms and intelligence with which to support itself.

Between these two social classes there cannot be any bond of friendship or fraternity, because the possessing class is always bent on perpetuating the economic, political and social system that guarantees it the tranquil enjoyment of its robberies, while the working class endeavors to destroy this iniquitous system and put in its stead a method whereby the land, the houses, the machinery or production and the means of transportation may be for the common use.

MEXICANS: The Mexican Liberal Party recognizes that every human being, by the very fact of his having come into existence, has a right to enjoy each and all the advantages modern civilization offers, because those advantages are the product of the efforts and sacrifices of the working class throughout all time.

The Mexican Liberal Party recognizes labor as necessary for the sustenance of the individual and of society, and all, therefore, with the exception of the aged, the crippled, the deficient and children, must dedicate themselves to the production of some-

thing useful, that will satisfy our wants.

The Mexican Liberal Party recognizes that the so-called right of private property is an iniquitous right, because it compels the great majority of human beings to work and suffer for the satisfaction and ease of a small number of capitalists.

The Mexican Liberal Party recognizes that Authority and the Clergy are the mainstay of the iniquity of Capital, and [51] therefore:

The Organizing Junta of the Mexican Liberal Party has solemnly declared war against Authority, war against Capital, war against the Clergy.

Against Capital, Authority and the Clergy the Mexican Liberal Party has raised the Red Flag on Mexico's fields of action, where our brothers are fighting like lions, disputing the victory with the bourgeoisie's hosts, whether those hosts call themselves Maderistas, Reyistas, Vazquistas, Cientificos or what else, since their one purpose is to hoist some individual into the position of first magistrate of the country, in order that, under the shelter of his wing, they may do business without any consideration whatever for the mass of Mexico's population, since they all regard as sacred the right of individual property.

In these moments of confusion, so propitious for the attack on oppression and exploitation; in these moments when Authority, broken, thrown off its balance, vacillating, attacked on either flank by every unchained passion, by the storms of all the appetites that have been set on edge by the hope of being soon able to glut themselves; in these moments of despair-

ing distraction, of agony, of terror on the part of Privilege, the compact masses of the disinherited are invading the lands, burning the title deeds, laying their creative hands on the fertile soil and menacing with their fists all that yesterday was respectable—Authority, Capital and Clergy. They are turning the furrow, scattering the seed and awaiting, full of emotion, the first fruits of a labor that is free.

These, Mexicans, are the first practiced results of the propaganda and action of the soldiers of the proletariat; of the generous upholders of our equalitarian principles; of our brothers who are bidding defiance to all imposition and all exploitation [52] with this cry of death for those on top, but of life and hope for those below—"Land and Liberty!" The tempest renews itself from day to day. Madristas, Vazquistas, Reyistas, Cientificos, De La Barritas—They are crying to you, Mexicans, to fly to the defense of the privileges of the capitalistic class. Do not listen to the sweet songs of these sirens, who wish to profit by your sacrifices that they may establish a new Government; that is to say a watchdog for the protection of the interests of the rich. Up! Every one of you, that you may bring to a head the expropriation of the wealth the rich are keeping back from you.

During the progress of this great movement expropriation must be brought to a head at every cost, as have done and are still doing our brothers, the inhabitants of Morelos, of Southern Puebla, of Michoacan, Guerrero, Veracruz, Northern Tamaulipas, Durango, Sonora, Sinaloa, Jalisco, Chihuahua,

Oaxaca, Yucatan, Quintana Roo and parts of other states. Mexico's bourgeois press itself has to confess that the proletariat has taken possession of the land without waiting for any paternal government to deign to make it happy, since that proletariat knows that it has nothing good to expect from governments, and that the emancipation of the workers must be the task of the workers themselves.

These first acts of expropriation have been crowned with the most smiling success; but we must not confine ourselves to taking possession of the land and implements of agriculture. The workers in all the various industries must resolutely take possession of them, so arranging things as that the land, the mines, the factories, the workshops, the foundries, the cars, the railroads, the shipping, the warehouses and the houses may remain in the possession of each and every one of the inhabitants of Mexico, without distinction of sex. [53]

In each district where this act of supreme justice is brought to a head the inhabitants will have only to come to an understanding and take whatever may be found in the stores, warehouses, granaries, etc., to place easily accessible to all, where honest men and women will make and exact inventory of all that has been collected, and make a calculation as to the length of time it will last, the number of those who must use it being taken into account, from the moment of expropriation until the first crops are raised and the various industries turn out their first products.

The inventory having been made, the workers in

the various industries will come to a fraternal understanding as to the regulation of production, which should be so conducted as that none shall go in need during the progress of this movement, and those alone die of hunger who do not wish to work—the old, the crippled and the children, who shall be entitled to enjoyment of everything, alone excepted.

Everything produced will be sent to the general store, from which all will have the right to take ALL THEIR NEEDS REQUIRE, the only prerequisite being a certificate to the effect that they are working in such or such an industry.

Humanity's aspiration is to obtain the greatest possible amount of satisfaction with the least possible effort, and the method most adequate to that end is the working of the land and other industries in common. If the land is divided and each family takes a piece, there will be, in the first place, the grave danger of falling back into the capitalist system, for there will be no lack of the cunning or the miserly who will manage to get more than do others, and they may be able finally to exploit their equals. Apart from this grave danger it is the fact that [54] if a single family works a single piece of land it will have to work as hard, or even harder than it does to-day, under the system of individual property, to obtain the miserable result it now obtains; but, on the other hand, if the peasants unite their labor and work the land in common, they will toil less and produce more. Of course there is land enough to give every one a house and lot of his own, to use as pleases him. What has been said about the

cultivation of the land in common applies to work in the factory, the shop, etc. Each, in accordance with his temperament, his tastes, his inclinations, will be able to choose the kind of work that suits him best, provided he produces sufficient for his own needs and does not make himself a charge on the community.

Working in the manner pointed out, expropriation being followed immediately by the organization of production, now freed from the masters and based on the needs of the inhabitants of each region, nobody will be in want, despite the armed movement; and finally that movement, terminating with the disappearance of the last bourgeois and the last vestige of authority or its agents, the privilege-sustaining law, and with everything in the hands of those who labor, we all shall clasp one another in a fraternal embrace and celebrate with shouts of joy the installation of a system that shall guarantee to every human being Bread and Liberty.

MEXICANS! It is for this that the Mexican Liberal Party is struggling. It is for this that a band of heroes, battling beneath the Red Flag, is pouring out its generous blood to the glorious cry of "Land and Liberty!"

The Liberals have not laid down their arms, despite the treaties of peace made by the traitor Madero with the tyrant [55] Diaz, and despite the urgings of the bourgeoisie that they should fill their pockets with gold. We have acted this because we Liberals are men who are convinced that political liberty does not benefit the poor but only the place-hunters, and because our object is not to

obtain places of honors, but to take everything out of the hands of the bourgeoisie, that it may remain in the power of the workers.

The activity of the different political bands now disputing among themselves for supremacy will result in the doing of exactly what the tyrant Porfirio Diaz did, inasmuch as no man, however well-meaning he may be, can do anything for the poor when he finds himself in power. That activity has produced a chaos which we, the disinherited, ought to turn to account, taking advantage of the country's special circumstances to put in practice, without loss of time and while on the march, the sublime ideals of the Mexican Liberal Party. We must not delay expropriation until *peach* shall have been made, for then the supplies in the stores, granaries, warehouses and other places of deposit will have become exhausted, and, owing to the prevalent state of war, production will have been suspended, which will lead to famine. On the other hand, if we carry out expropriation and the organization of free labor while the movement is afoot, neither then nor afterwards will any one go in need of the necessities of life.

MEXICANS! If you wish to be free, once and for all, battle for no other cause than that of the Mexican Liberal Party. All the others offer you political liberty after they shall have triumphed. We Liberals invite you to take immediate possession of the land, the machinery, the means of transportation and the houses, without expecting that anybody will give [56] them to you or that the law will decree it, for the law are not made for the poor but for

the frock-coated gentlemen who take good care that all is in favor of their caste.

It is the duty of us, the poor, to work and struggle to break the chains that make us slaves. To leave the solution of our problems to the educated and wealthy classes is to put ourselves voluntarily into their clutches. We the plebians, we the ragged, we the hungry, we who have no foot of land whereon to lay our heads, we who live tortured with anxiety as to the bread needed to-morrow by our wives and children, we who when we become old are discharged ignominiously because we cannot work; we have to make powerful efforts and a thousand sacrifices to destroy, to its very foundations, the edifice of the old society, which has been hitherto a tender mother to the rich and wicked, but a cruel step-mother to the poor and good.

All the evils which afflict humanity spring from the existing system, which compels the majority to toil and sacrifice itself that a privileged minority may satisfy all its needs and all its caprices while living in ease and vice. Things would not be so bad if all the poor were assured of work, and were it not that production is arranged not for the satisfaction of the toilers' needs but to produce what the bourgeoisie want, and they contrive that more than they can buy shall not be produced. Hence come periods when work shops or the number of workers is reduced; a condition furthered by the perfecting of machinery, which takes the place of the proletarian's muscles.

In order to do away with all this it is necessary that the workers take into their hands the machinery

of production, and that they themselves regulate the production of wealth, attending to their own needs.
[57]

Robbery, prostitution, murder, incendiarism, swindling—these are the products of a system which places men and women in conditions under which, in order to escape dying of hunger, they have to take where they can or prostitute themselves; for in the majority of cases, although they may be most anxious to work they cannot get it, or it is so ill paid that they cannot earn the wage necessary to meet the most imperious needs of themselves individually and their families. Apart from this, the long hours and the conditions in the midst of which work is done under the present capitalist system quickly make an end of the worker's health and even of his life, in those industrial catastrophes the sole origin of which is the contempt with which the capitalist class views those who sacrifice themselves for it.

Irritated by the injustice of which he is the subject; angered by the ostentatious luxury of those who do nothing; clubbed by the policeman for being poor; obliged to hire out his muscle to be employed in tasks which do not please him; badly paid; despised by all those who know more than he does or whom, having money, think themselves superior to those who own nothing; having before him the prospect of a miserable old age and the death of an animal discharged from the stable because no longer useful; rendered from day to day uneasy by the possibility of being without work; obliged to regard as enemies those of his own class, because he never

knows which of them will be the one to hire himself out for less than he himself is receiving; this being the poor man's position it is natural that anti-social instincts should develop, and that crime, prostitution, disloyalty, should be the natural fruits of the old and odious system which we are seeking to destroy to its lowest roots, that we may create a new one of love, of equality, of justice, of [58] fraternity, of liberty.

Arise then, as one man! In the hands of all are tranquility, well being, liberty, the satisfaction of all sane appetites. But let us not allow ourselves to be guided by directors. Let each be master of himself, that everything may be arranged by THE MUTUAL CONSENTING OF FREE INDIVIDUALITIES. Death to slavery! Death to hunger! Long live Land and Liberty!

MEXICANS! With our hands on our hearts and our consciences tranquil, we appeal, formally and solemnly to you all, men and women, to adopt the lofty ideals of the Mexican Liberal Party. While there are rich and poor, governors and governed, there will be no peach; and it is not to be desired that there should be peace, for that peace would be founded on the political, economic and social slavery of millions of human beings who suffer hunger, outrages, prison and death, while a small minority enjoys all kinds of pleasures and liberties, for doing nothing

On to the struggle! On to expropriation, with the idea of benefiting not a few but all; for this is not a war of bandits but of honest men and women who

desire that all shall be brothers and enjoy, as such, the good things that nature offers us so generously and that the muscle and intelligence of man have created, the sole condition being that each shall dedicate himself to truly useful work.

Liberty and well-being are within our grasp. With the same effort and sacrifice needed to elevate to power a governor, that is to say, a tyrant, we can now expropriate the wealth the rich hold back. Choose, then! A new governor, that is, a new *yok*, or redeeming expropriation and the abolition of all imposition, be it religious, political or what it may.

LAND AND LIBERTY. [59]

Los Angeles, California, U. S. A., Sept. 23, 1911.
(Signed) RICARDO FLORES MAGON,

LIBRADO RIVERA,
ANSELMO L. FIGUEROA,
ENRIQUE FLORES MAGON,
ANTONIO de PARAUJO,

BE IT REMEMBERED FURTHER that upon the trial of this cause the defendants in their own behalf introduced in evidence the whole of the article containing the nonmailable matter set out in the second count of the indictment, which said article was and is in words and figures as follows, to wit:

“THE TEXAS UPRIISING.

For several weeks the capitalist press has been giving accounts of battles between mexicans and United States forces in territory comprising the Texas counties of Hidalgo, Cameron, Starr, and others adjoining those mentioned above.

Naturally, the real causes of that conflict are not mentioned. They want to make it appear that the uprisings of the Mexicans in that section of the United States is due to an understanding among Mexicans to carry out a Plan of San Diego, which advocates the independence of the vast territory grabbed by the United States from Mexico at the middle of the last century. As time passes, the real cause of that movement is appearing.

It is not the desire to put under control of Mexico the territory covered by the States of Texas, New Mexico, Arizona, Colorado, California and part of others, what has impelled the Mexicans residing in Texas, to rise in arms against the authorities of the United States, but a very distinct one; the desire to save themselves from the attempts of which people of our race are so frequently victims in this country.

Here is how a capitalist paper, 'El Presente' of San Antonio, Texas, explains the origin of the uprising. It says: [60] 'The origin of this revolt is found in the following facts: A Mexican was dancing in a house in a small town near Brownsville and an American tried to grab the woman that danced with him. The Mexican opposed this and as he stepped out on the street was treacherously killed by the American. The Mexicans immediately avenged the death of their countryman and this forced the avengers to leave the village already armed and disposed to defend themselves from a certain lynching or hanging. The precarious situation of several men presented them the opportunity

to rise in arms, and they took them to earn their bread in this violent form.'

How distinct is all this from the lies propounded by the rest of the capitalist press!

As is seen, the movement in Texas began with the rebellion of a handful of men that refused to be the victims of the ruling justice of that state against people of our race, and which handful of men was joined by all those, who, tired of offering their arms to the rich to be exploited, without getting the work sought, found in the attitude of the rebels a good opportunity to wrest by force from the hands of the capitalists, what these always deny to the poor; a piece of bread for themselves and families.

Naturally, those rebels were the victims of a ferocious persecution, because that is the way Madame Authority is: Immutable and ferocious to the extent that, instead of seeking peace among men, with its obtrusive acts excites them to war. Instead of approaching those men and in a well-meaning way trying to quiet them and assuring them the tranquility and liberty to which every human being is entitled, its representatives, those barbarians called rangers, 'a sort of rural police of the [61 American territory on the Mexican border, fired upon the rebels as soon as they sighted them. The rebels returned the fire and this was the beginning of the state of war in which that portion of the United States finds itself.

However, even the movement could have been confined to the conflict between the original rebels and the rangers; but Authority is not a shield or a

shelter of the poor, but its lash, therefore instead of protecting the poor inhabitants in the region in which it persecuted the rebels, it began to hostilize them in a thousand ways, pretending to find a rebel in each Mexican baron the minions happened to come across, and then the rangers began an infamous manhunt against the Mexicans. The rangers, reinforced civilians, hordes of police-thugs and mercenaries of all descriptions, would enter and trample the humble habitations occupied by the Mexicans; for Authority never bothers the bourgeoisie, or whom it is the watch dog, and there they would deliver themselves to veritable orgies, only proper of cannibals, discharging their arms upon men, old men, women and children trying to avenge on innocent people the losses that in open combat the rebels had inflicted upon them.

One of the many houses assaulted, was that of Comrade Aniceto Pizana, man of honesty, who resided with his family near the Tulitos rancho, adjacent to Brownsville. The house was assaulted on August 3 by a horde of savages, representatives of Authority, firing indiscriminately upon the inhabitants regardless of age or sex. Aniceto is not a man that allows being trampled upon; he is a man conscious of his rights, and with three more comrades that happened to be in his house at that time, returned the fire of the bandits who numbered from 30 to 35. And hard was the battle that ensued. Our four comrades demonstrated prodigious [62] valor, as the assailants were well fortified, and notwithstanding the fact that all the advantages were on the side of the lackeys, our heroic brothers

held them at bay for over half an hour, killing and wounding several of them. Unfortunately a little boy, Pizana's only son, was wounded on the leg by a shot from the bandits, and it was necessary to amputate it. Ever since then Aniceto also is under arms, and according to the capitalist press, his activity is very intense.

The case of Aniceto is not an isolated case. The same thing happened in other places of the Brownsville region. Similar outrages were committed by the representatives of Authority on persons who perhaps never thought of rebelling; but who were forced by circumstances to take up arms to defend themselves from the savage assaults, to save their lives and that of their dear ones; or, at least, to have the satisfaction of exchanging a laborious and honest life, for the life of a criminal "ranger," of a minion or volunteer of the savage State of Texas.

Here is how a spark of rebellion was propagated, and what started as a vulgar persecution to a handful of persons, has been transformed through the stupidity of Authority into a veritable Revolution. There is no such thing as Plan of San Diego or any scheme of that kind; what there is, is a movement of real defense of the oppressed against the oppressor. Those under arms are not as the prostituted capitalist press tries to make it appear, but men who finding no protection in Authority, seek it in the rifle; men who prefer to sell their lives dear rather than permit being killed like muttons by bandits without conscience or honor.

The crimes committed by the "rangers" in this

last two months, and, particularly in this last two weeks, twitches the [63] nerves of the dullest man. Hundreds of innocent Mexicans have been killed by those savages, among the victims being men, young and old, women and children. The houses where the Mexicans live have been burned, their crops razed, and such attempts have contributed to extend the revolutionary movement. A local paper, ‘The Los Angeles Tribune,’ says in its issue of the 8th of last month, referring to the zone involved in the Revolution of the State of Texas: ‘ territory as large as the State of Illinois is fearfully apprehensive of midnight attacks, burning of fields and death.’

In another part of the same issue, the same paper says: ‘More than five hundred Mexicans have been killed on the Rio Grande within the last three weeks, according to reports from the rangers to-day,—September 7—to police officials in the counties affected by the Revolution.’

This is what the ‘rangers’ confess; but knowing the criminal instincts that integrate the mercenary bodies of those ferocious beasts in the State of Texas, it is to be presumed that they have been short in their information, and that the victims of Authority must ascend to a higher number.

Here is how ‘El Presente’ speaks referring to the victims of the ‘rangers’: ‘Nobody knows who killed those found hanging to trees or riddled with bullets; but everybody points to the ‘rangers.’ And it adds: ‘Men have been killed under a bed and in their

houses, notwithstanding their plea for a moment of peace to explain. They have been dragged from jails to be hung and mostly to be shot from the back after they have delivered their arms and surrendered.'

Shot from the back after they have surrendered! Can better proof of felony be extracted from a 'ranger'? [64]

This is, very strikingly what happens in Texas. It is not a movement of bandits as the capitalist press tries to make it appear, but a natural uprising of man that seeing his very existence menaced, defends himself as best he can.

Justice and not bullets is what ought to be given to the revolutionists of Texas, and from now on we should demand that the persecutions to innocent Mexicans should cease, and, as to the revolutionists, we should also demand that they be not executed (shot).

The ones who should be shot are the 'rangers' and the band of bandits who accompany them in their depredations.

RICARDO FLORES MAGON."

"THE CARRANZA REFORMS.

Venustiano Carranza has succeeded in attracting followers by making good his promises of distribution of the land and public land grants to the towns and communities.

Seeing that the people no longer have faith in promises to be carried out 'after the triumph,' he is making those promises effective, he is putting in

practice the reforms he added to his program when he realized that the people fight to acquire the material things that shall give them economic independence, without which individual liberty is impossible.

In Veracruz, Yucatan and some other States controlled by Carranza, the distribution of land is being made among the rural people, and the towns are receiving endowments of public lands. But will the realization of such promises give the disinherited the liberty and well-being to which they have a right as human beings that they are? We do not believe it, because such reform will not kill the so-called right of private property. That iniquitous right, the source of all the ills that accurse humanity, remaining on foot, its two powerful supporters will [65] also live: the Church and the State, that is, the priest and Authority, without which Capitalism could not exist.

It would not be so bad if those land grants were made by free title, that is, if nothing was charged for them to the beneficiaries; but that is not so; the farmer who receives a piece of land, has to pay its value to a landlord thru the government. He has to pay, besides, contributions so that the President of the Republic may live and amuse himself, and also the Ministers of his cabinet, the deputies, the senators, the judges, the magistrates, the functionaries of the denominations, soldiers, policemen, jailers, . . . to say nothing of the consulate and diplomatic representatives, to whom enormous sums must be paid to represent the country, and the thousand and one canories and grafts that

they divide among themselves and favorites of the rulers, and the immense sums that besmear the hands of functionaries; big and small, apart of their legal salaries.

All of this has to be paid, besides the fabulous sums of money invested in war materials, in public buildings and a thousand other things, all costly because all want to extract profit from them, and besides, also, the national debt which amounts to sums almost inconceivable to the imagination.

The farmer, within the system of individual or private property, has to pay for the irrigating water parcel, he has to pay for the wood that he brings from the forest or from the wood-yard of the capitalist, he has to build his shack at his expense and the implements and animals he needs for his work, he must have provisions to keep from dying of hunger while he raises his first crop, he must have money to buy the seeds he needs to plant. To sum up: He needs money for everything that [66] he wants, and even for what he does not need, but which weighs upon him, brutalizes, bleeds and exploits him: Authority and the Clergy.

And if the year is bad, what anguish! The government will exact *ist* contributions, as if the crops had been good; the money-changer will exact his loan from the farmer, without consideration of any kind. Then he will have to sell or mortgage his horse or ox, or to borrow more money to come out ahead and fill some other bellies, the bellies, of our executioners, while our children, our wives and our aged parents languish before our eyes, the victims of

our pertinacity to want a government, suffering the consequences of our lack of courage to tell our revolutionary chiefs: we want no reform! We want the abolition of the right of private or individual property: We want all that exists to be for all. And tearing into a thousand pieces the personal flags, agitate very highly the Manifesto of the 23d of September, 1911, whose principals are the only ones that guarantee to every human being liberty and well-being, because it wants no more private property, nor Authority, nor Clergy.

The poor, the real pariah, the disinherited that has not a stone where to lay his head, has nothing to gain by Carransista reforms, because he needs money to start work on a piece of land, but let us suppose that he had something for provisions, implements for work and the most indispensable things that would enable him to subsist while he raised the first crop, and supposing furthermore, that the crop was good, the markets being controlled by the capitalists, the farmer would be subjected to sell his products at a paltry price to the grabbers, that for which he had worked more than any laborer [67] for a mean pittance, and misery and sorrow would continue to reign in his home, while happiness and plenty would reign in the homes of the bourgeoisie, in the same way that it occurred before the Revolution.

The Carrancista reforms are the most bloody jokes that the proletariat could have ever received. His agrarian reform is a slap on the face of the disinherited.

Enough of reforms! What we hungry people need is entire liberty based on economic independence. Down with the so-called rights of private property, and as long as this evil right continues to exist we shall continue under arms. Enough of mockery! Poor people, whoever speaks to you about Carrancismo spit in their face and break their jaws.

RICARDO FLORES MAGON."

BE IT REMEMBERED FURTHER that upon the trial of this cause the defendants in their own behalf introduced in evidence the whole of the article containing the alleged nonmailable matter set out in the third count of the indictment, which said article was and is in words and figures as follows, in English translation, to wit:

“TO CARRANCISTA SOLDIERS.

Carrancista soldiers, listen: Very soon, your First Chief, shall remain almost master of the situation, and I say almost master of the situation, because there are rebels that will not submit to the authority of Venustiano Carranza, but who will prefer to remain arms in hand, expounding a worthy existence for the cause of humanity, before surrendering his arms to a government, which like any other government on Earth, shall not be anything else but a prop on which capitalism relies to continue its exploitation of the working class at leisure, that is, [68] to have the poor perpetually under the domination of the rich.

These rebels that shall continue on foot, are your brothers, they are poor like you, and like you before

shouldering a gun shed their sweat in the furrow, leaving with it a land that was not theirs. They, like you, audaciously submerged themselves in the darkness of the mines, disputing with the rocks the precious *met* also which were to fill the coffers that were not theirs. They, like you, defied extenuation and consumption in the factory side by side with those iron workers called machines, producing silks that would not cover their nudity, shoes that were not for their feet, furniture they would not use in their huts. They, like you, built the houses, to sleep in the open air; laid the rails to go on foot; they grazed the cattle to live on herbs and roots; they chopped wood to shiver with cold.

Those rebels are your brothers. They are also awaited in the shack by a melancholic mother casting anxious looks along the dirty road; by a sad wife, by the loving sister, by the beloved daughter, the elderly father, the tender children, and those dear ones that make existence enchanting, the family, in a word, without whom we seem to lack something, we don't seem to be complete.

Those rebels are your brothers, only more intelligent than you are, they don't sacrifice themselves or their families to elevate a man to the Presidency who shall make the happiness of the humble, for experience, observation and the teachings of history have demonstrated that never in the life of humanity has the rare phenomenon been produced of a government that concerned itself for the well being of the poor *clases*, but all to the [69] contrary; it has always been seen that governments support the rich

as against the poor. You don't know why is that, you Carranza soldiers; but I will explain it to you in a few lines.

In the beginning, human beings had no government, then everything belonged to all; at that time the land—was free for anyone who wanted to work it; the forests supplied with wood and meat all those who cared to take the trouble to go and look for such things as necessary to life; the springs had no owner; all had an equal right to extract from the river, the lake or the sea, all the fishes they wanted. In that happy time there was no government, because there was no private property to protect, and people understood each other so well, that the greater part of all work was done in common, consumption was done in fraternity, everyone taking what he needed. But wars came of tribes against tribes and the vanquished were reduced to slavery, having then to work for their conquerors, who, naturally declared themselves owners of everything in existence. Then, Authority was born, there was privileges to protect; those of the conquerors over the conquered.

Here is how was born the principle of Authority, that had not as its origin, as generally supposed, the necessity of the weak defending themselves from the aggression of the strong, but the necessity of the strong to keep their riches safe from the possible aggressions on the part of the dispossessed.

If you, Carranza soldiers, have no material wealth to lose, it is bad for you to sacrifice yourself and those dear to you to elevate a man to the Presidency, who, as a ruler, will be your lash and your executor,

as he shall do nothing in your benefit, because in his mission is not to protect you from the aggressions of the strong, but to keep you subjected by means [70] of the law that the strong has made for his own protection, and not for yours.

The strong have the earth, the machinery of production, the houses, the means of transportation and distribution, of the prime material (*materia prima*) and of all manufactured things, and transportation, also of persons. All of that is what is called social wealth, and the possession of that wealth gives power to him that has it to play at his whim with the fate of him that has it not. That is why we, the anarchists who form the Mexican Liberal Party, do not fight to obtain an increase in wages, or a decrease in the hours of labor, nor for the indemnization of accidents, or for old age pensions, nor for any such things, but for the abolition of the right of private property which makes possible the gathering in a few hands of the social wealth. We want the social wealth to be the common patrimony of all the inhabitants of Mexico, men and women, without distinction of race or color.

All that as to salaries, more or less high, of indemnizations and so forth, can be easily acquired, because such things do not attach the right of private property which is the right to exploit and to keep the people in slavery. As long as the right of private property remains on foot, the same wrong that compelled you to take up arms will stand; misery, because it would do you good to have your wages raised and to be 'benefited' by the other reforms,

such as the diminution of the hours of labor, and others, if you have to pay a higher price for the necessities of life, and more for hours rent, to say nothing of contributions, which, if the government does not exact them from you in person, it will [71] exact them from your masters, who reimburse themselves by raising the prices of everything. You are the one who, in reality, pay the contributions, or taxes, not the bourgeois.

So you see, brother carrancistas, the problem which is going to be solved by the rebels who retain their arms, when Carranza becomes President, is the problem that you will have to decide because it affects you in the same manner.

Your duty is to help and for this purpose do not surrender your arms when the troops are ordered disbanded.

What you should do at such a time, or before if possible, is to rebel, turn your arms against your chiefs and officers and without trembling pulse open fire with your rifles, because they are your enemies and are concerned in having these conditions last forever, so they can have a life of privilege.

A strong heart, a firm pulse and steady aim is all you need to exterminate your immediate oppressors.

If you surrender your arms you will return to your home in poverty, ready to sell your blood and strength to the rich at their own price.

You will have accomplished nothing, but in the meantime your chiefs and officers will enjoy, in the city, all kinds of pleasures and honors, and display

on their breasts and crosses and medals. If you remain in the Carranza army as a permanent soldier you will be a bad man, and executioner of your brothers of your class because you will help to serve the rich.

Honor points to the road you should take; rebel against the government until you attain the triumphs of the principles comprised in the declaration of the 23d of September, 1911, expedited by the Mexican Liberal Party, principals that [72] advocate the death of capital, of authority and of clergy of all religions.

Decide to follow this road. Don't be deceived by the specious arguments of alleged wise politicians; these same arguments were used by the enemies of the great French Revolution to prevent the people from obtaining their political liberty.

It was the argument of Porfirio Diaz to prevent you from obtaining your liberties; it is also the argument of the Carranza party used to prevent you from obtaining your economic liberty, which is the foundation of all liberties.

This means the privilege of earning your living by working for yourself and being independent, and this can only be obtained, understand, by expropriation of land, houses, machinery, means of transportation and merchandise becoming common property, without distinction of men or women, race or color. He who tells you to the contrary, spit in his face and even kill him, because it is necessary, it is absolutely necessary, to initiate a revolutionary campaign of housecleaning.

We, the disinherited, must rid ourselves of those who are in our way, if we can, by hook or crook, the same as we get rid of a tiger, as we annihilate the rattlesnake, as we crush the tarantula.

Those who tell you that they are not prepared for this or other conquests which benefit you, are the ones who have interest in delaying your emancipation, so that in the meantime they can live at your expense.

Now, carrancista soldiers, to act as men convinced that there is nothing in common between the poor and the rich, unless it be the hatred that they mutually profess for each other, a hatred we must not try to lessen, but which precisely must be [73] deepened, exasperate it, increase it if it is possible, enliven it, poke it so that it shall not be extinguished, for the existence of that hatred between the two social classes, that of the exploited and that of the exploiters, is a guarantee of struggle and hope of emancipation for those who today are found in the last rung of the social ladder.

Long Live Land and Liberty!

RICARDO FLORES MAGON.

Here the defendant rested and the Government rested also, the foregoing being all the evidence offered or introduced by either party upon the trial of said cause.

And thereupon the Court charged the jury, as set out in the charge of the Court in the judgment-roll herein, which said charge of the Court as set out in the judgment-roll, comprises all the instructions given to the jury in said cause.

BE IT REMEMBERED FURTHER that the defendants requested certain instructions to be given by the Court which were refused and to the refusal to give each of the said instructions the defendants then and there duly excepted, said requested instructions are contained in the judgment-roll herein, and are hereby specifically referred to and made a part of this bill of exceptions.

Motion for New Trial.

And thereupon, the jury rendered a verdict of not guilty as to the first count in said indictment, and guilty as charged upon the second and third counts of said indictment, and thereupon the defendants, by their counsel, moved the Court for a new trial of said cause, the said motion for a new trial omitting the caption, being in words and figures as follows: to wit: [74]

"Now come the defendants Enrique Flores Magon and Ricardo Flores Magon, in their own proper person, and by counsel and move the court for a new trial herein for the following reasons, to wit:

1. Because the verdict is contrary to law.
2. Because the verdict is contrary to the evidence.
3. Because the evidence is insufficient to support the verdict.
4. Because the verdict is against the weight of the evidence.
5. Because the Court erred in refusing to give to the jury defendant's requested instructions numbers two, three, five, six, eight, nine, eleven and twelve.
6. Because the Court erred in denying the defend-

ants' motion to require the Government to elect as to which court the Government would first proceed to trial on.

7. Because the Court erred in denying the motion of the defendants for a separate trial.

8. Because the Court erred in sustaining the objection of the Government to the following question propounded to the defendant Enrique Flores Magon, upon direct examination, to wit, 'At the time you deposited, or caused to be deposited in the mail, the alleged nonmailable matter set out in the second and third counts of the indictment, did you know such matter to be of a character tending to incite murder or assassination?'

9. The Court erred in sustaining the objection of the Government to the following question propounded to the defendant Enrique Flores Magon, in direct examination, to wit: 'At the time that you deposited, or caused to be deposited in the mail the objectional matter set out in counts two and three of [75] said indictment, did you intend to deposit in the mail indecent matter, that is to say, matter of a character tending to incite murder or assassination?'

10. Because the Court erred in instructing the jury that one who writes nonmailable matter for a newspaper, being neither its editor, manager, owner or publisher, is criminally responsible for the transmission of such matter through the mails.

11. Because the Court erred in failing to instruct the jury as to the meaning of the word "Assassination" as used in Section 211, P. C. as amended.

WHEREFORE, the defendants pray that the verdict be set aside, and a new trial granted herein.

J. H. RYCKMAN,

Attorney for Enrique Flores Magon and Ricardo Flores Magon."

which said motion was denied by the Court, to which ruling of the Court the defendants and each of them then and there duly excepted and thereupon the defendants moved the Court to arrest judgment upon the said verdict, which said motion, omitting the caption was and is in figures as follows, to wit:

Motion in Arrest of Judgment.

"Now come the defendants Enrique Flores Magon and Ricardo Flores Magon, each for himself, after verdict and before sentence, and move the Court that judgment be arrested herein as to each of said defendants, for the following reasons, to wit:

I.

Because the facts stated in the second count of said indictment do not constitute an offense against the United States.

II.

Because the facts stated in the third count of said indictment do not constitute an offense against the United States. [76]

III.

Because the alleged nonmailable matter set out in the second count of said indictment is not of a character tending to incite murder or assassination.

IV.

Because the alleged nonmailable matter set out in

the third count of said indictment is not of a character tending to incite murder or assassination.

V.

Because the alleged nonmailable matter set out in the second count of said indictment is neither vile, nor filthy nor of an indecent character.

VI.

Because the alleged nonmailable matter set out in the third count of said indictment is neither vile, nor filthy, nor of an indecent character.

VII.

Because it is not alleged in either the second or third counts of said indictment that the alleged objectionable matter was nonmailable.

VIII.

Because it is not alleged in either the second or third counts of said indictment that the newspaper, or newspapers containing said alleged objectionable matter were addressed to any person, or persons whomsoever, nor is it alleged in either of said counts that the address or addresses of the persons or persons to whom said newspaper or newspapers were to be delivered by the postoffice establishment were to the grand jurors unknown.

IX.

Because it is not alleged in said indictment that these [77] defendants, or either of them, knew that the newspapers, or any of them alleged to have been deposited by them in the postoffice, contained indecent matter, nor is it alleged that the defendants, or either of them knew the import of said alleged indecent matter, nor that they, or either of them, knew

that said matter was of a character tending to incite murder or assassination, nor is it alleged in said indictment that these defendants, or either of them were the owners, or managers, or editors, or publishers of said newspaper, from which it could be inferred that they knew said newspapers contained indecent matter or matter tending to incite murder or assassination.

X.

Because in the second count of said indictment an indefinite number of distinct offenses are charged against these defendants, and each of them.

XI.

Because in the third count of said indictment an indefinite number of distinct offenses are charged against these defendants, and each of them.

XII.

Because the said indictment in the second and third thereof, is not direct or certain as regards the offense charged.

XIII.

Because the said indictment in the second and third counts thereof, is not direct or certain as to the particular circumstances and the offense charged, and that said particular circumstances are necessary to constitute a complete offense.

XIV.

Because said indictment in the second and third counts [78] thereof, does not contain a statement of the acts constituting the offense in ordinary and concise language, and in such a manner as to enable

a person of common understanding to know what was intended.

XV.

Because it was not intended by Congress in amending Section 211 of the Penal Code by the act of March 4th, 1911, defining the term "Indecent" as used in said section 211, P. C., to include matter of a character tending to incite arson, murder or assassination, thereby to deny the use of the mails to Mexicans or others resident in the United States, in agitating for political reforms in Mexico, or elsewhere, nor was it intended by Congress by such amendment to limit or curtail in any wise the rights of Mexican people resident here or elsewhere in their efforts for the social, industrial, or political amelioration of their condition, nor is it competent for Congress to make any law under subdivision 7 of Sec. VIII, of Art. I of the constitution infringing the first amendment to the constitution.

XVI.

Because the term "indecent" as defined by Congress in the amendment of March 4th, 1911, applies only to matter of a character tending to incite arson, murder or assassination among those whose minds are open to such influences, and there is no allegation in said indictment that the alleged nonmailable matter was addressed to any such person, or persons.

XVII.

Because said indictment is void for uncertainty.

WHEREFORE, the defendants, and each of them, pray that judgment herein may be arrested.

J. H. RYCKMAN,
Attorney for Enrique Flores Magon and Ricardo
Flores Magon.” [79]

whereupon said motion in arrest of judgment was denied by the Court in the words following, to wit:

Order Denying Motion in Arrest of Judgment.

“I presume it has been conceded that this is the first case that has been prosecuted under the amended law as adopted on 1909. Now, reference has been made in the argument here to the abridgment of free speech and a free press. It has been held that this law as it was before it was amended is within the constitution, and if the Government (Congress) has a right to prohibit the sending of obscene and lewd and lascivious matter through the mails, Congress certainly has the power to prohibit sending through the mails matter which has a tendency to the destruction of the Government. I, for my individual self, am not in sympathy with parts of section 211 in regard to trying to reform the morals of the entire community—every community in the United States —by prosecuting people for the misuse of the post-office. If I had been a member of Congress in the enacting of such laws, I should have opposed them. I don’t believe that morals ought to be reformed through the postoffice. These prosecutions for fraud orders, people using the postoffice to defraud people, do not have my sympathy at all.

I think this amendment, Mr. Ryckman, is better for the Government than these other enactments of

section 211; that is to say, as long as we have government, it is the duty of the Government to preserve itself, and that is necessary, that every government should have laws to preserve itself. The most severe laws in every government are the laws against treason. Of course, when a government is overthrown, those who were at one time guilty of treason become patriots and noble men. Jefferson and Paine, those men to whom you have referred, were regarded as traitors; men who primarily sought to overthrow the government of England, of course, would all have been executed if the [80] Revolution had not been successful. The King of England would not have been executed except Cromwall was successful, and if Cromwell had not been successful, he would have been executed.

And so it goes. It is the duty of every government to preserve itself. Now, I think this law prohibiting the sending of matter through the mails which would have a tendency to destroy the order and administration of the laws, is a wholesome law in the interest of the government; that is the way I look at it. Now, you say that the postoffice is a government monopoly. Yes, it is. The constitution provides for it. And yet there are in this country a great many people who are not satisfied with the government having that one monopoly, but they want the government to have all the monopolies; the government to take over the railroads and express companies and all means of transportation in the United States. It may be that you can't send such matter as this even by express or freight, or disseminate it in that way. It

is up to the government; if they take over these things, they have a right to regulate them.

I don't know, I am not speaking about the wisdom of such laws, or whether they are good or bad, but I do not propose in my remarks to follow you through all you have said. I think that Mr. Ryckman made a brilliant defense of these defendants. You presented their case well to the jury; you presented it in every way well; I think you may be proud of the defense you have made of these defendants. In your remarks you have referred to Tom Paine, and you have referred in your address to the jury to an article Tom Paine wrote named 'The Crisis.' I may have gotten confused as to where the various things contained in his writings appear. I have read them all with great pleasure, but I think it is in 'The Crisis' in which he wrote, when he was a soldier in [81] the Revolutionary army—wrote, I believe, on the head of a drum, and in that remark he said, 'This is no time for sunshine soldiers.' Now, it seems to me that these defendants have got no right to come under the American Flag, a flag that is supposed to be the grandest emblem of freedom in all the world, and they have got no right to come here and do things that may involve this country into a war with Mexico. They have got no right to seek the protection of the American flag in order to fight the battles they may have in Mexico. They have been here now for sixteen years, the evidence in this case shows, at all the times in trouble with this Government, violating its laws. They have got no right to do that; they are aliens to this country; they are

aliens to our people; I think it would be very much more becoming of them if they would be down there in Mexico with a musket fighting for their rights, as they claim, or fighting for whatever they want to fight for instead of doing things that at the present time indicates may get us into trouble, and God forbid that we may have it.

I said a while ago that I was not going to follow you through your remarks. I think these men have been prosecuted justly, by a just complaint; they have been tried by a good jury and well defended; I don't think there is any error in the record. Your motion will be overruled."

to which ruling of the Court, the defendants and each of them then and there duly excepted.

And forasmuch as the evidence and proceedings and matters of exception above set forth do not fully appear of record, the defendants Enrique Flores Magon and Ricardo Flores Magon, by their attorney tenders this bill of exceptions and pray that the same be signed and sealed by the Court here, pursuant [82] to the statute in such case made and provided;

Which is done accordingly this 20th day of September, A. D. 1916.

OSCAR A. TRIPPET,
Judge.

[Endorsed]: Original. No. 1071—Criminal. In the District Court of the United States, in and for the Southern District of California, Southern Division. The United States of America, Plaintiffs, vs. Enrique Flores Magon, and Ricardo Flores Magon,

Defendants. Bill of Exceptions. Rec'd. copy this Aug. 2d. 1916. Albert Schoonover, U. S. Atty. Filed Aug. 2, 1916, at — min. past — o'clock — M. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Approved and filed Sept. 27, 1916, Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. J. H. Ryekman. Suite 921 Higgins Building, Second and Main Sts., Los Angeles, California, Home A-4533, Main 5247, Attorney for Defendants.

[83]

*In the District Court of the United States, in and
for the Southern District of California, South-
ern Division.*

No. 1071—CRIMINAL.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

ENRIQUE FLORES MAGON and RICARDO
FLORES MAGON,
Defendants.

Bond of Ricardo Flores Magon.

KNOW ALL MEN BY THESE PRESENTS:
That I, Ricardo Flores Magon, as principal, and Mathilde S. Forrester, Chauncey D. Clarke and Reuben T. Forrester, as sureties, are held and firmly bound unto the United States of America, in the full and just sum of three thousand dollars, payment of which, well and truly to be made, we bind ourselves and our heirs, executors and administrators and successors, jointly and severally, by these presents.

Sealed with our seals and dated this 24th day of June, 1916.

Whereas, at a regular term of the United States District Court, in and for the Southern District of California, Southern Division, on June 22d, 1916, in a suit wherein the United States of America was plaintiff, and the said Ricardo Flores Magon et al., were defendants, a judgment and sentence were rendered against the defendant Ricardo Flores Magon; and the said defendant has obtained a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit, to reverse said judgment and sentence in the aforesaid suit and proceeding, and a citation directing the United States of America to be [84] and appear in the said United States Court of Appeals for the Ninth Circuit at San Francisco, California, sixty days from and after the date of said citation, which citation has been duly served.

Now, the condition of this obligation is such that if the said Ricardo Flores Magon shall appear, either in person or by attorney, in the said Circuit Court of Appeals on such date or dates as may be appointed for the hearing of the said cause in said court, and prosecute his writ of error, and shall abide by all the orders made by said Circuit Court of Appeals, and shall surrender himself in execution and will satisfy the judgment and sentence appealed from as said Court may direct, if the judgment and sentence against him shall be affirmed, then this obli-

gation to be void; otherwise to be and remain in full force and effect.

RICARDO FLORES MAGON,
Principal.

MATHILDE S. FORRESTER, (Seal)

CHAUNCEY D. CLARKE, (Seal)

REUBEN T. FORRESTER, (Seal)

Sureties.

Signed, sealed and acknowledged before me this 24th day of June, 1916.

[Seal] D. M. HAMMOCK,
U. S. Commissioner of the United States District Court, in and for the Southern District of California, Southern Division.

Examined and approved this 26th day of June, 1916.

OSCAR A. TRIPPET,
Judge. [85]

State of California,
Los Angeles County,—ss.

We, Mathilde F. Forrester, and Chauncey D. Clarke, being duly sworn, each for himself and not one for the other, do swear that they are each worth the sum of three thousand dollars, over and above all debts and liabilities and exclusive of exemptions under the laws of this State, and that said property on which we base our worth is in this State and County.

CHAUNCEY D. CLARKE.
MATHILDE S. FORRESTER.

Subscribed and sworn to before me this June 24,
1916.

[Seal] D. M. HAMMOCK,
United States Commissioner, Southern District
California.

State of California,
Los Angeles County,—ss.

I, Reuben T. Forrester, being duly affirmed, do solemnly and sincerely affirm under the pains and penalties of perjury, that I am worth the sum of three thousand dollars, in property in said County, over and above my debts and liabilities.

REUBEN T. FORRESTER.

Subscribed and solemnly affirmed before me, this June 24, 1916.

[Seal] D. M. HAMMOCK,
U. S. Commissioner, Southern District California.

[Endorsed]: Original. No. 1071-Criminal. In the District Court of the United States, in and for the Southern District of California, Southern Division. The United States of America, Plaintiff, vs. Enrique Flores Magon and Ricardo Flores Magon, Defendants. Bond of Ricardo Flores Magon. Filed June 26, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. J. H. Ryckman, [86] Lawyers, Suite 921 Higgins Building, Second and Main Sts., Los Angeles, California, Home A-4533, Main 8533, Attorney for Defendants.

[87]

*In the District Court of the United States, in and
for the Southern District of California, South-
ern Division.*

No. 1071—CRIMINAL.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

ENRIQUE FLORES MAGON and RICARDO
FLORES MAGON,

Defendants.

Bond of Enrique Flores Magon.

KNOW ALL MEN BY THESE PRESENTS:
That I, Enrique Flores Magon, as principal, and
C. F. W. Richard Bruns and Marie R. Clarke, as
sureties, are held and firmly bound unto the United
States of America, in the full and just sum of five
thousand dollars, payment of which, well and truly
to be made, we bind ourselves, our heirs, executors
and administrators and successors, jointly and sev-
erally, by these presents.

Sealed with our seals and dated this 1st day of
July, 1916.

Whereas, at a regular term of the United States
District Court, in and for the Southern District of
California, Southern Division, on June 22d, 1916,
in a suit wherein the United States of America was
plaintiff, and the said Enrique Flores Magon et al.,
were defendants, a judgment and sentence were ren-
dered against the defendant Enrique Flores Magon;
and the said defendant has obtained a writ of error

from the United States Circuit Court of Appeals for the Ninth Circuit, to reverse said judgment and sentence in the aforesaid suit and proceeding, and a citation directing the United States of America to be and [88] appear in the said United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, thirty days from and after the date of said citation, which citation has been duly served.

Now, the condition of this obligation is such that if the said Enrique Flores Magon shall appear, either in person or by attorney, in the said Circuit Court of Appeals on such date or dates as may be appointed for the hearing of the said cause in said court, and prosecute his writ of error, and shall abide by all the orders made by said Circuit Court of Appeals, and shall surrender himself in execution and will satisfy the judgment and sentence appealed from as said court may direct, if the judgment and sentence against him shall be affirmed, then this obligation to be void; otherwise to be and remain in full force and effect.

ENRIQUE FLORES MAGON, (Seal)
Principal.

C. F. W. RICHARD BRUNS, (Seal)
Surety.

MARIE R. CLARKE, (Seal)
Surety.

Signed, sealed and acknowledged before me this
1st day of July, 1916.

[Seal] D. M. HAMMOCK,
Commissioner of the United States District Court,
in and for the Southern District of California,
Southern Division.

Examined and approved this 1st day of July, 1916.

OSCAR A. TRIPPET,
Judge. [89]

United States of America,
State of California,
County of Los Angeles,—ss.

I, C. F. W. Richard Bruns, of lawful age, being
duly sworn, do solemnly swear that I am a free-
holder of said county; that I am worth the sum of
\$5,000 over and above all debts and liabilities and
exclusive of exemptions under the laws of this State,
and that I am the owner in my own name of unen-
umbered real property in said County of the value
of \$5,000.

C. W. F. RICHARD BRUNS.

Subscribed and sworn before me this 1st day of
July, 1916.

[Seal] D. M. HAMMOCK,
United States Commissioner, Southern District of
California.

United States of America,
State of California,
County of Los Angeles,—ss.

I, Marie R. Clarke, of lawful age, being duly af-
firmed, do solemnly and sincerely affirm under the
pains and penalties of perjury that I am a freeholder

in said County and that I am worth the sum of \$5,000 over and above my debts, liabilities and exemptions and that I am the owner of unencumbered real estate in said County in my own name of the value of \$5,000.

MARIE R. CLARKE.

Subscribed in my presence and solemnly affirmed before me this 1st day of July, 1916.

[Seal] D. M. HAMMOND,
United States Commissioner, Southern District of
California. [90]

[Endorsed]: Original. No. 1071-Criminal. In the District Court of the United States, in and for the Southern District of California, Southern Division. The United States of America, Plaintiff, vs. Enrique Flores Magon and Ricardo Flores Magon, Defendants. Bond of Enrique Flores Magon. Filed Jul. 1, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. J. H. Ryckman. Suite 921 Higgins Building, Second and Main Sts., Los Angeles, California. Home A-4533. Main 5247. Attorney for Defendants. [91]

*In the District Court of the United States, in and
for the Southern District of California, South-
ern Division.*

No. 1071—CRIMINAL.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

ENRIQUE FLORES MAGON and RICARDO
FLORES MAGON,

Defendants.

Petition for Writ of Error.

Your petitioners Enrique Flores Magon and Ricardo Flores Magon, defendants in the above-entitled cause, feeling themselves aggrieved by the judgment herein, come now by J. H. Ryckman, their attorney, and petition the Court for an order allowing the defendants to prosecute a writ of error to the Honorable United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States, and in that behalf your petitioners say:

That on June 22d, 1916, there was made, given and rendered in this cause, a judgment against your petitioners, whereby your petitioners were adjudged and sentenced to imprisonment at McNeil's Island upon each of the second and third counts of the indictment, to run concurrently as follows: Enrique Flores Magon, three years and to pay a fine of \$1,000, and Ricardo Flores Magon one year and a day, and to pay a fine of \$1,000.

Your petitioners say that they are advised by their counsel and therefore aver that there was, and is manifest error in the records and proceedings had in said cause, and in the making, giving and entry of such judgment and sentence to the [92] great injury and damage of your petitioners, and that each and all of said errors will be more fully made to appear by an examination of said records, and by an examination of the bill of exceptions to be hereafter by your petitioners, tendered and filed and of the assignment of errors to be hereinafter set out, and to the end that the judgment, sentence and proceedings may be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, your petitioners pray that a writ of error may issue, directed therefrom to the said District Court of the United States, for the Southern District of California, Southern Division, returnable according to law and the practice of the Court, and that there may be directed to be returned pursuant thereto, a copy of the record, bill of exceptions, assignment of errors, and all proceedings had, and to be had in said cause, and that the same may be removed into the United States Circuit Court of Appeals for the Ninth Circuit, to the end that the error, if any has happened, may be duly corrected and full and speedy justice done your petitioners. And your petitioners make the assignment of errors attached hereto upon which they, and each of them will rely and which will be made to appear by a return of said record in obedience to said writ, a more full assignment to be attached to the bill of exceptions to be hereafter prepared.

WHEREFORE, these defendants pray that a writ of error may issue in this behalf to the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of the errors so complained of; that the assignment of errors filed herewith may be considered as their assignment of errors upon the writ; that a transcript of the records, proceedings, papers and bill of exceptions herein duly authenticated may be sent to the said [93] United States Circuit Court of Appeals for the Ninth Circuit, and that the judgment rendered in this cause may be reversed; that the defendants be awarded a supersedeas; that the defendants be admitted to bail and that the Court fix the amount of said bail, and the amount of the security which the defendants shall give upon said writ of error, and that all further proceedings in this court be suspended and stayed until the termination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit, and your petitioners will ever pray.

ENRIQUE FLORES MAGON.

RICARDO FLORES MAGON.

J. H. RYCKMAN,

Attorney for Defendants.

Allowed: Bond ——————

Judge.

State of California,

County of Los Angeles,—ss.

Enrique Flores Magon and Ricardo Flores Magon,
being by me first duly sworn, each for himself depose
and say: That they are the defendants in the above-

entitled action; that they have heard read the foregoing Petition for Writ of Error, and know the contents thereof; and that the same is true of their own knowledge, except as to the matter which are therein stated upon their information or belief, and as to those matters that they believe it to be true.

ENRIQUE FLORES MAGON.
RICARDO FLORES MAGON.

Subscribed and sworn to before me this 22 day of June, 1916.

[Seal] RALPH J. DOMINGUEZ,
Notary Public in and for the County of Los Angeles,
State of California. [94]

[Endorsed]: Original. No. 1071-Criminal. In the District Court of the United States, in and for the Southern District of California, Southern Division. The United States of America, Plaintiff, vs. Enrique Flores Magon and Ricardo Flores Magon, Defendants. Petition for Writ of Error. Filed Jun. 22, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. J. H. Ryckman, Lawyers, Suite 921 Higgins Building, Second and Main Sts., Los Angeles, California, Home A-4533, Main 8533, Attorney for Defendants. [95]

*In the District Court of the United States in and
for the Southern District of California, South-
ern Division.*

No. 1071—CRIMINAL.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

ENRIQUE FLORES MAGON and RICARDO
MATON,

Defendants.

Assignment of Errors.

Come now the defendants Enrique Flores Magon and Ricardo Flores Magon by their counsel J. H. Ryckman and file the following assignment of errors upon which they will rely upon their prosecution of the writ of error in the above-entitled cause from the order and judgment made by this Honorable Court, on the 22d day of June, 1916, in the above-entitled cause.

1. That the Court erred in overruling the defendants' demurrer to the indictment.
2. That the Court erred in overruling the demur-
rer of the defendants to the second count of the in-
dictment.
3. That the Court erred in overruling the demur-
rer of the defendants to the third count of the in-
dictment.
4. That the Court erred in denying the defen-
dants' motion to quash the indictment.
5. That the Court erred in denying the defen-

ants' motion in arrest of judgment.

6. That the verdict is contrary to law.
7. That the verdict is contrary to the evidence.
8. That the verdict is contrary to the law and the evidence. [96]
9. That the evidence is insufficient to support the verdict.
10. That the verdict is against the weight of the evidence.
11. That the Court erred in denying the defendants' motion to require the Government to elect as to which count the Government would first proceed to trial upon.
12. That the Court erred in denying the motion of the defendants for a separate trial.
13. That the Court erred in refusing to give to the jury defendants' requested instructions numbers 2, 3, 5, 6, 8, 9, 11, and 12.
14. That the Court erred in sustaining the objection of the Government to the following question propounded to the defendant Enrique Flores Magon, upon direct examination, to wit: "At the time you deposited, or caused to be deposited in the mail, the alleged nonmailable matter set out in the second and third counts of the indictment, did you know such matter to be of a character tending to incite murder or assassination?"
15. That the Court erred in sustaining the objection of the Government to the following question propounded to the defendant Enrique Flores Magon, in direct examination, to wit: "At the time that you deposited, or caused to be deposited in the mail

the objectionable matter set out in counts two and three of said indictment, did you intend to deposit in the mail the indecent matter, that is to say, matter of character tending to incite murder or assassination?"

16. That the Court erred in instructing the jury that one who writes nonmailable matter for a newspaper, being neither [97] its editor, manager, owner or publisher, is criminally responsible for the transmission of such matter through the mails.

17. That the Court erred in not instructing the jury to return a verdict of not guilty.

J. H. RYCKMAN,

Attorney for Enrique Flores Magon and Ricardo Flores Magon.

[Endorsed]: Original. No. 1071-Criminal. In the District Court of the United States, in and for the Southern District of California, Southern Division. The United States of America, Plaintiffs, vs. Enrique Flores Magon and Ricardo Flores Magon, Defendants. Assignment of Errors. Filed June 22, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. J. H. Ryckman, Lawyers, Suite 921 Higgins Building, Second and Main Sts., Los Angeles, California, Home A-4533, Main 8533. Attorneys for Defendants. [98]

*In the District Court of the United States in and
for the Southern District of California, South-
ern Division.*

No. 1071—CRIMINAL.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

ENRIQUE FLORES MAGON AND RICARDO
FLORES MAGON,

Defendants.

Order Allowing Writ of Error.

Upon motion of J. H. Ryckman, attorney for the defendants Enrique Flores Magon and Ricardo Flores Magon, and upon filing of the petition for writ of error and assignment of errors, it is ordered that a writ of error be, and is hereby allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, the verdict and judgment heretofore entered herein; that pending the decision upon the said writ of error the *supersedeas* prayed for by the defendants in the petition for a writ of error herein is hereby allowed, and the defendants Enrique Flores Magon and Ricardo Flores Magon are admitted to bail upon said writ of error in the sum of \$5000 as to Enrique Flores Magon, and \$3000 as to Ricardo Flores Magon, and the bond for costs upon the writ of error is hereby fixed at the sum of Three Hundred Dollars.

OSCAR A. TRIPPET,
Judge.

[Endorsed]: Original. No. 1071—Criminal. In the District Court of the United States, in and for the Southern District of California, Southern Division. The United States of America, Plaintiffs, [99] vs. Enrique Flores Magon and Ricardo Flores Magon, Defendants. Order Allowing Writ of Error. Filed Jan. 22, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. J. H. Ryckman, Lawyers, Suite 921 Higgins Building, Second and Main Sts., Los Angeles, California, Home A-4533, Main 8533, Attorney for Defendants. [100]

*In the District Court of the United States, in and
for the Southern District of California, South-
ern Division.*

No. 1071—CRIMINAL.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

ENRIQUE FLORES MAGON and RICARDO
FLORES MAGON,

Defendants.

Praecipe for Record on Appeal.

To the Clerk of said Court:

Please make true copies of the following for record on appeal:

1. The indictment;
2. The petition for writ of error;
3. The assignment of errors;
4. The writ of error;
5. The citation to writ of error;

6. The defendants' requested instructions numbers 2, 3, 5, 6, 8, 9, 11 and 12, refused by the Court;
7. The verdict of the jury;
8. The judgment of the Court;
9. The bill of exceptions.

J. H. RYCKMAN,
Attorneys for Defendants.

[Endorsed]: Original. No. 1071—Criminal. In the District Court, etc., The United States of America, Plaintiff, vs. Enrique Flores Magon and Ricardo Flores Magon, Defendants. Praecipe [101] for Record on Appeal. Filed Sept. 29, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. J. H. Ryckman, 920 Higgins Bldg., Los Angeles, Cal., Attorney for Defendants. [102]

In the District Court of the United States of America, in and for the Southern District of California, Southern Division.

No. 1071—CRIMINAL.

Plaintiffs,

vs.

ENRIQUE FLORES MAGON and RICARDO
FLORES MAGON,

Defendants.

Certificate of Clerk U. S. District Court to
Transcript of Record.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing One Hundred and Two (102) type-

written pages, numbered from 1 to 102 inclusive, and comprised in one volume, to be a full, true and correct copy of the Indictment, Verdict, Instructions requested by Defendants, Judgment and Sentence, Bill of Exceptions, Bond of Ricardo Flores Magon, Bond of Enrique Flores Magon, Petition for Writ of Error, Assignment of Errors, Order Allowing the Writ of Error, and the Praeclipe for Record on Writ of Error in the above and therein Entitled Action, and that the same together constitute the record in said action as specified in the said Praeclipe filed in my office on behalf of the Plaintiffs in Error by their attorney of record.

I do further certify that the cost of the foregoing record is \$51.40 the amount whereof has been paid me by Enrique Flores Magon and Ricardo Flores Magon, the plaintiffs in error herein. [103]

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this 18th day of December, in the year of our Lord one thousand nine hundred and sixteen and of our Independence the one hundred and forty-first.

[Seal] WM. M. VAN DYKE,
Clerk of the District Court of the United States of America in and for the Southern District of California. [104]

[Endorsed]: No. 2901. United States Circuit Court of Appeals for the Ninth Circuit. Enrique Flores Magon and Ricardo Flores Magon, Plaintiffs

in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Southern District of California, Southern Division.

Filed December 26, 1916.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

*In the United States Circuit Court of Appeals, Ninth
Judicial District.*

No. 1071-CRIMINAL.

ENRIQUE FLORES MAGON and RICARDO
FLORES MAGON,

Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

**Order Enlarging Time to October 1, 1916, to File
Record and Docket Cause.**

Good cause appearing therefor, IT IS ORDERED, that the time heretofore allowed said plaintiffs in error to docket said cause and file the records thereof, with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby enlarged to and including the 1st day of October, 1916.

Dated, Los Angeles, California, June 30th, 1916.

OSCAR A. TRIPPET,

United States District Judge, Southern District of California.

[Endorsed]: Original. No. 1071-Criminal. In the United States Circuit Court of Appeals, Ninth Judicial District. Enrique Flores Magon and Ricardo Flores Magon, Plaintiffs in Error, vs. The United States of America, Defendant in Error. Order Enlarging Time.

No. 2901. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to October 1, 1916 to File Record Thereof and to Docket Case. Filed Jul. 3, 1916. F. D. Monckton, Clerk. Refiled Dec. 26, 1916. F. D. Monckton, Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

(No. 1071—CRIM.)

ENRIQUE FLORES MAGON and RICARDO FLORES MAGON,

Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

**Order Enlarging Time to December 31, 1916, to File
Record and Docket Cause.**

Good cause appearing therefor, it is hereby ordered that the time of plaintiffs in error within

which to file record and docket cause in the above-entitled court be, and the same hereby is extended to and including the 31st day of December, 1916.

Dated, Sep. 20, 1916.

OSCAR A. TRIPPET,
Judge.

[Endorsed]: No. 2901. United States Circuit Court of Appeals for the Ninth Circuit. Enrique Flores Magon and Ricardo Flores Magon, Plaintiffs in Error, vs. The United States of America, Defendants in Error. Order Under Rule 16 Enlarging Time to Dec. 31, 1916 to File Record Thereof and to Docket Case. Filed Oct. 2, 1916. F. D. Monckton, Clerk. Refiled Dec. 26, 1916. F. D. Monckton, Clerk.